



OFFICE OF THE GOVERNOR
NEVADA STATE OFFICE OF ENERGY

POSTED SEPTEMBER 13, 2012

NOTICE OF PUBLIC HEARING FOR THE
AMENDMENT OF PERMANENT REGULATIONS OF THE
NEVADA STATE OFFICE OF ENERGY

LCB FILE NUMBER: R125-11

The Nevada State Office of Energy will hold one public hearing on the following date and locations:

Monday, October 15, 2012
2:00PM

Guinn Annex, 101 North Carson Street, Carson City, NV

The hearing will be video cast to:

Grant Sawyer Building, 555 East Washington Street, Suite 5100, Las Vegas, NV

The Nevada State Office of Energy will receive testimony from all interested persons and consider and take action on the following proposed adoption of amendments, additions and deletions to the Nevada Administrative Code pertaining to the Office of Energy. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Office of Energy may proceed immediately to act upon any written submissions:

1. The Need for and Purpose of the Proposed Amended Permanent Regulations.

The proposed amended regulation is intended to implement the provisions of NRS 701A.300-390, of Chapter 363, Stats. 2011 which authorize the Director of the Office of Energy to grant partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS.

Terms or Substance of the Proposed Amended Permanent Regulations or Description of the Subjects and Issues Involved.

See attached language.

2. Estimated Economic Effect of the Proposed Amended Permanent Regulations on the Business, which it is to Regulate and the Public.

A. Adverse and Beneficial Effects.

The Legislature, through its hearings and deliberations regarding AB 522 (subsequently codified as NRS 701A.300 through 701A.450), received testimony and evidence regarding the impact that AB 522 would have upon small business in Nevada. The Legislature concluded that AB 522 would and was intended to have only positive impacts upon small business by encouraging and promoting small businesses to construct and operate renewable energy power generation facilities in Nevada. The mechanism chosen by the Legislature in AB 522 to effectuate its intent was to offer businesses partial abatements of sales and use taxes for three years and property taxes for twenty years for the construction and operation of such facilities

B. Immediate and Long-Term Effects.

The proposed regulations are intended to effectuate the Legislative intent contained in AB 522, and will not and are intended not to have any negative impact upon small businesses. The proposed regulations are and will have positive effects on small businesses that will be subject to the proposed regulations.

3. Estimated Cost to Agency for Enforcement of Proposed Amended Permanent Regulations.

The changes proposed by the Nevada Office of Energy should not incur any new costs for the enforcement of the proposed regulation.

4. Regulations of Other State or Local Governmental Agencies which the Proposed Amended Permanent Regulations Overlap or Duplicate and the Necessity Therefore.

The proposed amended permanent regulations do not appear to overlap or duplicate regulations of other state or local governmental agencies.


5. Establishment of New Fee or Existing Fee Increase.

None.

Persons wishing to comment on the proposed action of the Nevada State Office of Energy may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada State Office of Energy, 755 North Roop Street, Suite 202, Carson City, Nevada 89701. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Nevada State Office of Energy, 755 North Roop Street, Suite 202, Carson City, Nevada; Nevada Department of Taxation, 1550 College Pkwy Suite 115, Carson City Nevada; Nevada Commission on Economic Development, 108 East Proctor, Carson City Nevada; Carson City Library, 900 N. Roop Street, Carson City Nevada; and in all counties at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.


 Brita Tryggvi, Deputy Director for
 Stacey Crowley, Director
 September 13, 2012

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the State Office of Energy in writing or by calling 775-687-1850 no later than five working days prior to the meeting.

Notice has been posted at the following locations: Nevada State Office of Energy, 755 North Roop Street, Suite 202, Carson City, Nevada; Department of Taxation, 1550 College Pkwy Suite 115, Carson City Nevada; Nevada Governor's Office on Economic Development, 808 West Nye Lane, Carson City, NV; Carson City Library, 900 N. Roop Street, Carson City Nevada. Notice was faxed to each County Public Library for posting.

Proposed Regulation dated
January 23, 2012

**PROPOSED REGULATION OF THE
DIRECTOR OF THE OFFICE OF ENERGY**

LCB File No. R125-11

January 23, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-21, 23, 24 and 25, NRS 701A.390; §22, NRS 701A.450.

A REGULATION relating to energy-related tax incentives; requiring the Director of the Office of Energy to assume the duties of the Nevada Energy Commissioner with respect to energy-related tax incentives; and providing other matters properly relating thereto.

Section 1. Section 3 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 3. “Abatement agreement” means an agreement executed by the
~~{Commissioner}~~ **Director** and an applicant upon the issuance of a final decision by the
~~{Commissioner}~~ **Director** that the applicant is eligible for a partial abatement of taxes.

Sec. 2. Section 9 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 9. “Partial abatement of taxes” means an abatement of a portion of:

1. Local sales and use taxes;
2. The property taxes imposed pursuant to chapter 361 of NRS; or
3. Both local sales and use taxes and the property taxes imposed pursuant to chapter 361 of NRS,

↪ authorized by NRS 701A.360 and approved by the ~~{Commissioner}~~ **Director** in a final decision issued pursuant to section 22 of this regulation.

Sec. 3. Section 14 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 14. 1. To apply for a partial abatement of taxes, an applicant must submit electronically a pre-application to the ~~{Commissioner}~~ **Director** on the form and in the manner prescribed by the ~~{Commissioner}~~ **Director**.

2. The ~~{Commissioner}~~ **Director** will review each pre-application to make a preliminary determination of whether the applicant has provided information sufficient to demonstrate that the applicant is eligible for a partial abatement of taxes. In reviewing a pre-application, the ~~{Commissioner}~~ **Director** will assume that all information provided by the applicant is true and correct. The ~~{Commissioner}~~ **Director** may request such additional information from an applicant as the ~~{Commissioner}~~ **Director** determines is necessary. If a pre-application is incomplete, the ~~{Commissioner}~~ **Director** will specify a reasonable amount of time within which the applicant must complete the pre-application. If the applicant does not complete the pre-application within the time specified by the ~~{Commissioner}~~ **Director**, the ~~{Commissioner}~~ **Director** will reject the pre-application.

3. The ~~{Commissioner}~~ **Director** will make a preliminary determination of an applicant's eligibility for a partial abatement of taxes and provide written notice of the preliminary determination to the applicant not later than 10 business days after the ~~{Commissioner}~~ **Director** receives a complete pre-application from the applicant. A preliminary determination made by the ~~{Commissioner}~~ **Director** is not a final decision regarding the eligibility of the applicant for a partial abatement of taxes.

4. If the ~~{Commissioner}~~ **Director** makes a preliminary determination that an applicant may be eligible for a partial abatement of taxes, the ~~{Commissioner}~~ **Director** will:

(a) Provide to the applicant:

(1) Written notice that the applicant may submit an application for a partial abatement of taxes; and

(2) An application form; and

(b) Provide to the governing body of each county, city or town in which the applicant's project or facility is located:

(1) A copy of the pre-application submitted by the applicant; and

(2) A copy of the notice provided to the applicant pursuant to subparagraph (1) of paragraph (a).

5. If the ~~{Commissioner}~~ **Director** makes a preliminary determination that an applicant is not eligible for a partial abatement of taxes, the ~~{Commissioner}~~ **Director** will provide to the applicant written notice of the preliminary determination which must include each reason for rejecting the pre-application. An applicant whose pre-application has been rejected is not thereby precluded from submitting any new or amended pre-application pursuant to this section.

6. A pre-application for the construction of a facility that was commenced after July 1, 2009, may be submitted at any time, but at least 15 business days before submission of the application. After January 31, 2011, a pre-application must be submitted not later than

6 months before the applicant's anticipated first date of purchasing tangible personal property for the project.

Sec. 4. Section 15 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 15. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to a pre-application which is submitted to the ~~{Commissioner}~~ **Director** and which is not otherwise declared by law to be confidential is a public record.

If an applicant believes that information contained in the pre-application is confidential and should be redacted and protected from publication, the applicant must:

(a) Submit with the original pre-application a redacted copy of the pre-application which clearly identifies each item in the pre-application that the applicant believes is confidential and should be redacted and protected from publication; and

(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. As soon as practicable after receipt of the original and redacted pre-applications, the ~~{Commissioner}~~ **Director** will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the pre-application; and

(b) Provide the applicant with written notice regarding the ~~{Commissioner's}~~ **Director's** determination.

3. Not later than 3 business days after an applicant receives the written notice of the ~~{Commissioner's}~~ **Director's** determination made pursuant to subsection 2, the applicant shall indicate to the ~~{Commissioner}~~ **Director** in writing with respect to each item which the ~~{Commissioner}~~ **Director** has determined may not be redacted from the pre-application:

- (a) That the applicant consents to publication of the item; or
- (b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the ~~{Commissioner}~~ **Director** again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the pre-application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the ~~{Commissioner}~~ **Director** determines that one or more items in a pre-application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in a pre-application are confidential and must not be made public, the ~~{Commissioner}~~ **Director** will prepare a copy of the pre-application from which the items that will not be made public have been redacted. The ~~{Commissioner}~~ **Director** will make public only the redacted pre-application.

Sec. 5. Section 16 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 16. 1. If the ~~{Commissioner}~~ **Director** provides notice to an applicant pursuant to subsection 4 of section 14 of this regulation that the applicant may submit an application for a partial abatement of taxes, the applicant must submit to the ~~{Commissioner}~~ **Director** electronically, on the form and in the manner prescribed by the

~~{Commissioner,}~~ **Director**, a request for the assignment of an application filing number. The ~~{Commissioner}~~ **Director** will assign an application filing number to the applicant not later than 2 business days after the ~~{Commissioner}~~ **Director** receives the request. The application filing number must appear on all correspondence, applications and other documents submitted by the applicant to the ~~{Commissioner,}~~ **Director**.

2. If the applicant does not submit the application within 5 business days after the assignment of the application filing number, the application filing number expires and the applicant must request a new application filing number from the ~~{Commissioner}~~ **Director** in the manner prescribed in subsection 1.

3. The application filing number of an application expires if the application is rejected by the Director.

Sec. 6. Section 17 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 17. 1. An applicant who has received written notice from the ~~{Commissioner}~~ **Director** that the applicant may submit an application for a partial abatement of taxes must submit electronically a complete application to the Director on the form provided by ~~{the Commissioner}~~ and in the manner prescribed by the Director . ~~{and the Commissioner.}~~

2. The application must be submitted not later than 5 business days after the applicant receives an application filing number pursuant to section 16 of this regulation.

3. Not later than 5 business days after receipt of an application, the Director shall review the application for timeliness and completeness. If the Director determines that an application is not timely filed, the Director shall reject the application and shall provide

written notice of the rejection to the applicant . ~~{and the Commissioner.}~~ For the purpose of determining whether an application is timely filed, the date on which the Director determines the application to be complete shall be deemed to be the date of receipt of the application. If the Director determines that an application is incomplete, the Director shall provide written notice that the application is incomplete to the applicant ~~{and the Commissioner}~~ and shall identify in the notice those items which the Director has determined are incomplete. The applicant shall provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director shall reject the application and shall provide written notice of the rejection to the applicant . ~~{and the Commissioner.}~~

4. An applicant whose application has been rejected pursuant to subsection 3 may request a new application filing number from the ~~{Commissioner}~~ **Director** and submit a new application.

5. The Director shall provide a copy of the application to:

- (a) ~~{The Commissioner;~~
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration; and
- ~~{(c)}~~ **(b)** The Department of Taxation.

6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director shall provide a copy of the application to:

- (a) The board of county commissioners of each county in which the project or facility is located;

- (b) The county assessor of each county in which the project or facility is located;
 - (c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;
 - (d) The governing body of each city or town in which the project or facility is located;
- and
- (e) The ~~{Commissioner}~~ *Office of Economic Development*.

7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.

Sec. 7. Section 18 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 18. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to an application which is submitted to the Director ~~{or the Commissioner}~~ and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the application is confidential and should be redacted and protected from publication, the applicant must:

- (a) Submit with the original application a redacted copy of the application which clearly identifies each item in the application that the applicant believes is confidential and should be redacted and protected from publication; and
- (b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. ~~{The Director shall provide the Commissioner with the redacted copy of the application submitted pursuant to paragraph (a) of subsection 1 at the time that the~~

~~Director provides a copy of the original application to the Commissioner.~~ As soon as practicable after receipt of copies of the original and redacted applications, the ~~{Commissioner will,}~~ **Director shall**, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the application; and

(b) Provide the applicant with written notice regarding the ~~{Commissioner's}~~ **Director's** determination.

3. Not later than 3 business days after an applicant receives the written notice of the ~~{Commissioner's}~~ **Director's** determination made pursuant to subsection 2, the applicant shall indicate to the ~~{Commissioner}~~ **Director** in writing with respect to each item which the ~~{Commissioner}~~ **Director** has determined may not be redacted from the application:

(a) That the applicant consents to publication of the item; or

(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the ~~{Commissioner}~~ **Director** again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the ~~{Commissioner}~~ **Director** determines that one or more items in an application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in an application are confidential and must not be made public, the ~~{Commissioner}~~ **Director** will prepare a copy of the application from

which the items that will not be made public have been redacted. The ~~{Commissioner}~~ will provide the redacted application to the Director as soon as practicable. Upon receipt of the redacted application from the Commissioner, the Director shall, as soon as practicable, provide a copy of the redacted application to:

- (a) The Chief of the Budget Division of the Department of Administration;
 - (b) The Department of Taxation;
 - (c) The board of county commissioners of each county in which the project or facility is located;
 - (d) The county assessor of each county in which the project or facility is located;
 - (e) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;
 - (f) The governing body of each city or town in which the project or facility is located;
- and
- (g) The ~~{Commissioner}~~ **Office of Economic Development**.

5. If an applicant submits an application which the applicant believes contains information that is confidential and should be redacted and protected from publication:

- (a) A recipient of a copy of the original application:
 - (1) Shall not make any portion of the original application public before the ~~{Commissioner}~~ **Director** has issued a written determination concerning the items which the applicant believes are confidential and should be redacted and protected from publication; and

(2) May make public only the information contained in the redacted application prepared by the ~~{Commissioner}~~ **Director**; and

(b) A recipient of a redacted application may make public only the information contained in the redacted application prepared by the ~~{Commissioner}~~ **Director**.

6. Any of the persons or governmental entities listed in subsection 4 may request in writing that the ~~{Commissioner}~~ **Director** additionally provide to the person or governmental entity any information which the ~~{Commissioner}~~ **Director** has determined is confidential. The ~~{Commissioner}~~ **Director** may, in his or her discretion, provide the requested information. If the ~~{Commissioner}~~ **Director** provides any such information, the person or governmental entity to whom he or she provides the information must limit access to and use of the information only to those people for whom such information is necessary in the performance of their duties, and all such information provided pursuant to this subsection may not be made public.

Sec. 8. Section 19 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 19. In preparing ~~{the}~~ **a** fiscal ~~{notes required by}~~ **note pursuant to** NRS 701A.375, the Chief of the Budget Division of the Department of Administration and the Department of Taxation shall ensure that:

1. Any information in the application which the ~~{Commissioner}~~ **Director** has determined is confidential and must be redacted and protected from publication be viewed and used only by those persons who must have access to the redacted information for the purpose of preparing the fiscal notes; and

2. The published fiscal note does not contain any information that the ~~{Commissioner}~~ **Director** has determined is confidential and must be redacted and protected from publication.

Sec. 9. Section 20 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 20. The ~~{Commissioner}~~ **Director** will not take any action regarding a requested partial abatement of property taxes pursuant to chapter 361 of NRS on an application submitted by an owner of a facility for the generation of electricity from geothermal resources unless the ~~{Commissioner}~~ **Director** receives written notice of approval of the application from the board of county commissioners of each county in which the facility is located. The ~~{Commissioner}~~ **Director** will process an application for a requested partial abatement of sales and use taxes pursuant to the provisions of sections 2 to 36, inclusive, of this regulation.

Sec. 10. Section 22 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 22. 1. Upon receipt of the documents described in sections 19 ~~{,}~~ **and** 20 ~~{and 24}~~ of this regulation, the ~~{Commissioner}~~ **Director** will set a date for a hearing on an application. The ~~{Commissioner}~~ **Director** will provide notice of the hearing to:

- (a) ~~{The Director;~~
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(e)}~~ (b) The Department of Taxation;
- ~~{(d)}~~ (c) The board of county commissioners of each county in which the project or facility is located;
- ~~{(e)}~~ (d) The county assessor of each county in which the project or facility is located;

~~{{(f)}} (e)~~ (e) The county treasurer of each county in which the project or facility is located;

~~{{(g)}} (f)~~ (f) The governing body of each city or town in which the project or facility is located;

~~{{(h)}} (g)~~ (g) The ~~{Commissioner}~~ *Office of Economic Development*; and

~~{{(i)}} (h)~~ (h) The applicant.

2. At a hearing conducted pursuant to this section, the applicant has the burden of proving by reasonable evidence that his or her application satisfies all the requirements for eligibility for a partial abatement of taxes.

3. At a hearing conducted pursuant to this section, the ~~{Commissioner}~~ *Director* or the ~~{Commissioner's}~~ *Director's* designee may ask questions of any witness.

4. If the ~~{Commissioner}~~ *Director* takes any action authorized by subsection 3 of NRS 701A.365, the ~~{Commissioner}~~ *Director* will do so at the hearing conducted pursuant to this section and will state on the record his or her reasons for so doing.

5. The ~~{Commissioner}~~ *Director* will issue findings of facts, conclusions of law and a final decision regarding an application not later than 10 business days after the date on which the hearing is concluded. The ~~{Commissioner}~~ *Director* may condition the approval of an application upon such terms as he or she determines are necessary. If the ~~{Commissioner}~~ *Director* determines that an applicant is eligible for a partial abatement of taxes, the ~~{Commissioner}~~ *Director* will execute an abatement agreement with the applicant as soon as practicable. The date on which the abatement agreement is executed by the ~~{Commissioner shall be considered}~~ *Director is* the date of the approval of the application for the purposes of NRS 701A.370.

Sec. 11. Section 23 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 23. 1. In addition to the applicant, any of the following persons or governmental entities may be a party to a hearing if the person or entity files a notice of intent to participate with the ~~{Commissioner}~~ **Director**:

(a) ~~{The Director}~~;

~~{(b)}~~ The Chief of the Budget Division of the Department of Administration;

~~{(e)}~~ (b) The Department of Taxation;

~~{(d)}~~ (c) The board of county commissioners of any county in which the project or facility is located;

~~{(e)}~~ (d) The county assessor of any county in which the project or facility is located;

~~{(f)}~~ (e) The county treasurer of any county in which the project or facility is located;

~~{(g)}~~ (f) The governing body of any city or town in which the project or facility is located; and

~~{(h)}~~ (g) The ~~{Commission on}~~ **Office of** Economic Development.

2. A person or governmental entity described in paragraph (a), (b) ~~{, (c) or (h)}~~ **or (g)** of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~{Commissioner}~~ **Director** and provide a copy of the notice to the applicant not later than 5 business days after the date on which notice of the hearing is published. A person or governmental entity described in paragraph (c), (d), (e) ~~{, (f)}~~ **or (g)** of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~{Commissioner}~~ **Director** and provide a copy of the notice to

the applicant not later than 15 business days after the date on which notice of the hearing is published. The notice of intent to participate must include, without limitation:

- (a) A statement of whether the party intends to support or oppose all or any portion of the application;
- (b) The legal arguments in support of the party's position; and
- (c) The identification of any witnesses or evidence that the party intends to present in support of the party's position.

3. Except as otherwise provided in subsection 4, any person or governmental entity that files a notice of intent to participate may attend the hearing personally or may be represented at the hearing by an attorney, agent or other representative.

4. The ~~{Commissioner}~~ **Director** may require any person who files a notice of intent to participate to appear personally at the hearing if the ~~{Commissioner}~~ **Director** determines that the appearance will assist the ~~{Commissioner}~~ **Director** in determining whether the applicant is qualified for a partial abatement of taxes.

Sec. 12. Section 24 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 24. 1. In determining whether an applicant has established that he or she has made the capital investment required by subparagraph (2) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (2) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~{Commissioner}~~ **Director** will consider:

- (a) A capital investment to be any expenditure for an asset that qualifies as "section 1245 property," as that term is defined in 26 U.S.C. § 1245, if the asset will be associated with and an integral part of the facility; and

(b) The amount paid for such an asset, including any capitalized interest, to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

2. In determining whether an applicant has satisfied the requirements of subparagraph (1) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (1) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~{Commissioner}~~ **Director** will consider an employee:

(a) To be a full-time employee working on the construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work 40 or more hours per week engaged in activity that furthers the construction of the facility.

(b) To be a resident of Nevada if the applicant establishes that the employee possesses a current and valid Nevada driver's license or a current and valid identification card issued by the Department of Motor Vehicles.

3. In determining whether an applicant has satisfied the average hourly wage requirements of subparagraph (3) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (3) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~{Commissioner}~~ **Director** will consider a person to be an employee of the facility if the applicant establishes that the person works on the site of the facility and is engaged in work that furthers the maintenance or operation of the facility. The ~~{Commissioner}~~ **Director** will consider an applicant to have satisfied those average hourly wage requirements if the applicant establishes that the average hourly wage paid to employees engaged in the

maintenance and operation of the facility meets or exceeds 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined on a monthly basis and calculated as the total wages paid to all employees who performed maintenance and operation work on the facility for that month divided by the total number of hours worked by all employees who performed maintenance or operation work on the facility for that month, excluding management and administrative employees.

4. The ~~{Commissioner}~~ **Director** will consider an applicant to have satisfied the average hourly wage requirements of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365 if the applicant establishes that the average hourly wage paid to employees engaged in the construction of a project meets or exceeds 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined on a weekly basis and calculated for each week during the construction period as the total wages paid to all employees who performed construction work on the project for that week divided by the total number of hours worked by all employees who performed construction work on the project for that week, excluding management and administrative employees.

5. To establish that an applicant has satisfied the requirements of sub-subparagraph (II) of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or sub-

subparagraph (II) of subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365, the applicant must establish that the cost of providing health insurance or a health insurance plan for an employee and the employee's dependents during the construction of the project includes, without limitation:

- (a) Emergency care;
- (b) Inpatient and outpatient hospital services;
- (c) Physicians' services;
- (d) Outpatient medical services;
- (e) Laboratory services;
- (f) Diagnostic testing services; and
- (g) For an in-network provider, a minimum employer contribution of at least 80 percent of medical expenses after the employee's deductible limit is met.

6. An applicant may satisfy the average hourly wage requirements in subsection 3 or 4 if the applicant's employees are paid:

- (a) The correct adjusted wage commencing on August 1 of each year; and
- (b) If the wage has been adjusted higher, an amount equivalent to the difference between the wage the employee was actually paid and the adjusted wage for all hours worked from July 1 through July 31. A payment made under this ~~subsection~~ **paragraph** must be made before September 1 of each year.

Sec. 13. Section 25 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 25. 1. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of taxes, the final decision must include:

- (a) The terms of the partial abatement of taxes;
- (b) A certificate of eligibility; and
- (c) A copy of the abatement agreement executed by the ~~{Commissioner}~~ **Director** and the applicant.

2. A partial abatement of taxes approved by the ~~{Commissioner}~~ **Director** is prospective only and must not be applied retroactively to any tax imposed before the execution of the abatement agreement between the ~~{Commissioner}~~ **Director** and the applicant.

Sec. 14. Section 26 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 26. 1. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of sales and use taxes, unless the certificate of eligibility and abatement agreement otherwise provide, the following tangible property which will be used exclusively for the construction, operation or maintenance of the facility qualifies for the partial abatement of sales and use taxes:

- (a) Materials for any building that will be located on the site of the facility, including, without limitation, residential structures if employees at the facility will be required to reside at the site of the facility;
- (b) Equipment, fixtures or furniture needed and used on the site of the facility;

(c) Materials for any road, parking lot or other structure that is not a building which will be located on the site of the facility;

(d) Materials to provide water, fuel or electrical power necessary for the facility, including, without limitation, the costs inherent in tie lines and transmission lines;

(e) Equipment, fixtures or other tangible items necessary for the generation of power on the site of the facility;

(f) Motor vehicles, if the motor vehicles are specifically purchased for exclusive use on the site of the facility;

(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically purchased for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project and operation of the facility;

(h) Mobile housing or office units, if the units will be located at the site of the facility throughout the construction of the project and operation of the facility;

(i) Materials, equipment, fixtures, components or other tangible items located at the site of the facility and necessary for the construction and operation of a facility for the transmission of electricity; and

(j) Materials for any road required for access along the site of a facility for the transmission of electricity that is specifically purchased for exclusive use on such roads.

2. If an applicant seeks a partial abatement of sales and use taxes for any tangible property other than the property described in subsection 1, the applicant's application

must specifically include a request that the ~~{Commissioner}~~ **Director** determine whether the property for which the partial abatement is requested qualifies for the partial abatement of sales and use taxes. The ~~{Commissioner}~~ **Director** shall consult with the Department of Taxation before making any determination on an applicant's request under this subsection. If the application includes a request pursuant to this subsection, the ~~{Commissioner's}~~ **Director's** final decision must include a determination of whether the property qualifies for the partial abatement of sales and use taxes.

Sec. 15. Section 27 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 27. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of the property taxes imposed pursuant to chapter 361 of NRS, unless the certificate of eligibility and abatement agreement otherwise provide, all real and personal property that would be taxable pursuant to chapter 361 of NRS that was purchased or leased specifically for exclusive use on the site of the facility qualifies for the partial abatement of property taxes.

Sec. 16. Section 28 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 28. 1. An applicant who has executed an abatement agreement with the ~~{Commissioner}~~ **Director** shall:

(a) Maintain a list of the names and contact information of each person, entity, contractor and subcontractor working on the construction of the project and operation of the facility who is authorized to claim the benefit of the partial abatement of taxes approved by the ~~{Commissioner}~~ **Director**;

(b) Ensure that the information contained in the list maintained pursuant to paragraph (a) is complete, current and accurate;

(c) Ensure that the list maintained pursuant to paragraph (a) is available for inspection by the authorized employees or agents of the ~~{Commissioner,}~~ **Director**, the Department of Taxation, any county in which the facility is located and vendors during normal business hours; and

(d) Ensure that each person, entity, contractor or subcontractor who is named on the list maintained pursuant to paragraph (a) complies with the terms of the abatement agreement.

2. If the applicant or any other person, entity, contractor or subcontractor fails to comply with the terms of the abatement agreement, the applicant shall pay to the State of Nevada the amount of any sales and use taxes and the amount of any property taxes abated resulting from the noncompliance.

Sec. 17. Section 29 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 29. 1. Each applicant who executes an abatement agreement with the ~~{Commissioner,}~~ **Director** shall file an annual compliance report with the Director on the form prescribed by the ~~{Commissioner,}~~ **Director**. The applicant shall file the annual compliance report on or before the anniversary date of the abatement agreement. The annual compliance report must include all information and documentation required by the ~~{Commissioner,}~~ **Director**.

2. ~~{The Director shall provide a copy of each annual compliance report filed pursuant to this section to the Commissioner as soon as practicable.}~~

~~3.~~ The ~~{Commissioner}~~ **Director** will review each annual compliance report as soon as practicable after receipt of the annual compliance report from the ~~{Director}~~ **applicant**. An annual compliance report which is incomplete will be rejected and shall be deemed not to have been filed. If the ~~{Commissioner}~~ **Director** determines that additional information is required to determine whether the applicant is in compliance with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** may request additional information from the applicant.

~~{4.}~~ 3. If the ~~{Commissioner}~~ **Director** determines that the annual compliance report and any additional information requested by the ~~{Commissioner}~~ **Director** establish that the applicant is in compliance with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** will notify the applicant of the determination in writing and provide a copy of the notice to:

- (a) The Department of Taxation;
- (b) The board of county commissioners of each county in which the project or facility is located;
- (c) The county assessor of each county in which the project or facility is located; and
- (d) The county treasurer of each county in which the project or facility is located.

Sec. 18. Section 30 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 30. 1. If, at any time or for any reason, the ~~{Commissioner}~~ **Director** determines that an applicant has ceased to meet any eligibility requirement for a partial abatement of taxes or that the applicant or any other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the

~~{Commissioner}~~ **Director** will notify the applicant in writing of the determination. The notice must include, without limitation:

- (a) A statement of the facts upon which the determination is based;
- (b) Identification of the provisions of NRS 701A.300 to 701A.390, inclusive, or sections 2 to 36, inclusive, of this regulation or the terms of the abatement agreement with which the applicant or other person, entity, contractor or subcontractor is not in compliance;
- (c) A time by which the applicant must respond to the ~~{Commissioner}~~ **Director** in writing;
- (d) A time by which the applicant must remedy the noncompliance identified by the ~~{Commissioner}~~ **Director**;
- (e) A statement that the applicant may request a hearing before the ~~{Commissioner}~~ **Director**; and
- (f) Any other information that the ~~{Commissioner}~~ **Director** believes will aid the applicant in remedying the noncompliance identified by the ~~{Commissioner}~~ **Director**.

2. If an applicant requests a hearing pursuant to this section, the ~~{Commissioner}~~ **Director** will set a date, time and place for the hearing and will provide written notice of the hearing to the applicant. The ~~{Commissioner}~~ **Director** will issue written findings of fact, conclusions of law and an order after the conclusion of the hearing.

3. If, after a hearing conducted pursuant to this section and a reasonable opportunity to remedy any noncompliance, the ~~{Commissioner}~~ **Director** determines that the applicant has ceased to meet the eligibility requirements for a partial abatement of taxes

or that the applicant or other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** will immediately:

(a) Terminate the partial abatement of taxes; and

(b) In addition to the notice requirement of subsection 3 of NRS 701A.380, provide notice of the termination to:

(1) ~~{The Director};~~

~~—(2)}~~ The Chief of the Budget Division of the Department of Administration;

~~{(3)}~~ (2) The Department of Taxation;

~~{(4)}~~ (3) The board of county commissioners of each county in which the project or facility is located;

~~{(5)}~~ (4) The county assessor of each county in which the project or facility is located;

~~{(6)}~~ (5) The county treasurer of each county in which the project or facility is located;

~~{(7)}~~ (6) The governing body of each city or town in which the project or facility is located;

~~{(8)}~~ (7) The ~~{Commissioner}~~ **Office of Economic Development**; and

~~{(9)}~~ (8) The applicant.

4. The ~~{Commissioner}~~ **Director** or his or her designee may conduct an on-site inspection of the project or facility and the applicant at any time to determine if the applicant is in compliance with the abatement agreement.

5. The ~~{Commissioner}~~ **Director** or his or her designee, upon a request of the board of county commissioners of any county or governing body of any city or town in which the project or facility is located, may conduct an on-site inspection of the project or facility or audit of the applicant to determine if the applicant is in compliance with the abatement agreement.

Sec. 19. Section 31 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 31. 1. If the ~~{Commissioner}~~ **Director** determines that a project or facility is not in compliance with the abatement agreement, the applicant shall pay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated during the period in which the project or facility was not in compliance with the abatement agreement.

2. Payment to the State of Nevada must be made within 60 days after the date of the written notice from the ~~{Commissioner}~~ **Director** to the applicant that payment is due. If the applicant fails timely to pay the amount of the abated taxes, the abated taxes bear interest at the rate of interest most recently established pursuant to NRS 99.040 calculated as starting on the effective date of the abatement agreement.

3. Any amounts paid to the State of Nevada to recoup abated local sales and use taxes and property taxes must be paid by the State of Nevada to the appropriate local agency. If the State of Nevada recovers any interest, the payment to the appropriate local agency must include an apportioned share of the interest recovered.

4. The ~~{Commissioner}~~ **Director** may take any action which is authorized by law and which he or she believes is reasonably necessary to enforce the provisions of this section.

Sec. 20. Section 32 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 32. The ~~{Commissioner}~~ **Director** may require that any pre-application, application, amendment, annual report or other document submitted to the ~~{Commissioner}~~ **Director** be attested to by the owner.

Sec. 21. Section 33 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 33. 1. If an owner intends to sell, assign or otherwise transfer all or some of the owner's interest in the project or facility, the owner must:

(a) If the sale, assignment or other transfer will occur before the hearing regarding the owner's application, amend the application to include information regarding the proposed successor in interest and the terms and conditions of the transaction.

(b) If the sale, assignment or other transfer will occur after the execution of an abatement agreement, provide written proof that the successor in interest has actual knowledge of and will fully comply with the abatement agreement.

2. Upon receipt of any of the information required by subsection 1, the ~~{Commissioner}~~ **Director** will provide a copy of the information to:

- (a) ~~{The Director;~~
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(c)}~~ **(b)** The Department of Taxation;
- ~~{(d)}~~ **(c)** The board of county commissioners of any county in which the project or facility is located;
- ~~{(e)}~~ **(d)** The county assessor of any county in which the project or facility is located;
- ~~{(f)}~~ **(e)** The county treasurer of any county in which the project or facility is located;

~~{(g)}~~ *(f)* The governing body of any city or town in which the project or facility is located; and

~~{(h)}~~ *(g)* The ~~{Commissioner}~~ *Office of* Economic Development.

3. A successor in interest to an owner is not eligible for or entitled to a partial abatement of taxes authorized by an abatement agreement executed pursuant to sections 2 to 36, inclusive, of this regulation until the ~~{Commissioner}~~ *Director* has received all the information required by subsection 1.

Sec. 22. Section 34 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 34. 1. On or before the second Monday of March, June, September and December of each year, the State Controller shall deposit all money in his or her possession that is subject to the provisions of NRS 701A.450 into the Renewable Energy Fund in such an account or accounts as directed by the ~~{Commissioner}~~ *Director*. All money received by the ~~{Commissioner}~~ *Director* from the State Controller pursuant to NRS 701A.450 must be deposited by the ~~{Commissioner}~~ *Director* into one or more interest-bearing accounts in financial institutions located in Nevada. All records related to the account or accounts are public records and must be maintained ~~{in the Office of the Commissioner}~~ *by the Director*.

2. At least annually, the ~~{Commissioner}~~ *Director* will have the account or accounts audited by an independent auditor, and any report made by the auditor is a public record and must be maintained ~~{in the Office of the Commissioner}~~ *by the Director*.

3. On or before June 30 of each year, the ~~{Commissioner}~~ *Director* will disburse from the account or accounts all of the money contained therein as follows:

(a) Seventy-five percent must be available to be used by the Public Utilities Commission of Nevada to offset the cost of electricity to retail customers pursuant to subsection 4 of NRS 701A.450; and

(b) Twenty-five percent must be dedicated solely to be used by the ~~{Commissioner}~~ **Director** for the operation and staffing of his or her office and for purposes related to the ~~{Commissioner's}~~ **Director's** duties and obligations pursuant to chapters 701 and 701A of NRS and sections 2 to 36, inclusive, of this regulation.

Sec. 23. Section 35 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 35. 1. An interested person who wishes to petition the ~~{Commissioner}~~ **Director** for the adoption, filing, amendment or repeal of a regulation in this chapter must file with the ~~{Commissioner}~~ **Director** the original and one copy of the petition.

2. The petition must include:

- (a) The name and address of the petitioner;
- (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
- (c) The reason for the adoption, filing, amendment or repeal of the regulation; and
- (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The ~~{Commissioner}~~ **Director** may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if:

- (a) The original petition is not accompanied by one copy of the petition; or
- (b) The petition does not contain the information required by subsection 2.

4. The ~~{Commissioner}~~ **Director** will notify the petitioner in writing of his or her decision within 30 days after the petition is filed.

Sec. 24. Section 36 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 36. 1. Except as otherwise provided in subsection 4, an interested person may petition the ~~{Commissioner}~~ **Director** to issue a declaratory order or advisory opinion concerning the applicability of a statute or regulation within the ~~{Commissioner's}~~ **Director's** purview or jurisdiction. The original and one copy of the petition must be filed with the ~~{Commissioner}~~ **Director**.

2. The petition must include:

- (a) The name and address of the petitioner;
- (b) The reason for requesting the order or opinion;
- (c) A statement of facts that support the petition; and
- (d) A clear and concise statement of the question to be decided by the ~~{Commissioner}~~ **Director** and the relief sought by the petitioner.

3. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.

4. The ~~{Commissioner}~~ **Director** may refuse to review a petition which requests that he or she issue a declaratory order or advisory opinion if:

- (a) The original petition is not accompanied by one copy of the petition;
- (b) The petition does not contain the information required by subsection 2; or

(c) The petition seeks a declaratory order or an advisory opinion prohibited by subsection 3.

5. The ~~{Commissioner}~~ **Director** may:

(a) Conduct an informal hearing to determine issues of fact or to hear arguments relating to the petition and may enter reasonable orders that govern the conduct of such a hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.

(d) Consider relevant decisions that have been issued by the ~~{Commissioner}~~ **Director** which apply or interpret the statute, regulation or decision in question.

(e) Enter any reasonable order to assist his or her review of the petition.

6. The ~~{Commissioner}~~ **Director** will maintain a record of the order or opinion that is indexed by subject matter and mail a copy of the order or opinion to the petitioner within 60 days after:

(a) The petition is filed;

(b) An informal hearing is conducted; or

(c) Any additional information or written argument is received by the ~~{Commissioner}~~

Director,

↪ whichever occurs later.

7. The ~~{Commissioner}~~ **Director** will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the staff of the ~~{Commissioner}~~ **Director** is not a decision or an advisory opinion of the ~~{Commissioner}~~ **Director**.

Sec. 25. Section 21 of LCB File No. R094-10 is hereby repealed.

TEXT OF REPEALED SECTION

Section 21 of LCB File No. R094-10:

Sec. 21. Upon receipt of the fiscal notes prepared pursuant to NRS 701A.375 and, if required by NRS 701A.365, the written notice of approval of an application from the board of county commissioners of each county in which the facility is located, the Director shall provide the documents to the Commissioner within 2 business days.

Proposed Regulation dated

July 19, 2012

**SECOND REVISED PROPOSED REGULATION OF
THE DIRECTOR OF THE OFFICE OF ENERGY**

LCB File No. R125-11

July 19, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-27, NRS 701A.390.

A REGULATION relating to energy-related tax incentives; requiring the Director of the Office of Energy to assume the duties of the Nevada Energy Commissioner with respect to certain energy-related tax incentives; revising certain provisions which prescribe the process by which owners of certain facilities for the generation or transmission of electricity generated from renewable energy may apply to the Director for and receive a partial abatement of certain taxes; requiring the Director to provide an applicant with written notice of the release of certain confidential information; providing that the Director may expedite the date of a hearing to approve an application for a partial abatement of taxes under certain circumstances; requiring the Director to determine whether an applicant is in compliance with the terms of any distribution received from the Renewable Energy Fund under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 701A of NAC is hereby amended by adding thereto a new section to read as follows:

1. *“Construction of the facility” means any activity that is:*
 - (a) *Related to the improvement of real property for which a project is designated; and*
 - (b) *Essential for the generation of renewable energy.*
2. *The term does not include:*

(a) Field development or preparatory work, including, without limitation, the installation of temporary fencing or exploratory wells, soil and pile testing, data system testing, surveying, grading and pad certification.

(b) Any activity related to the maintenance, operation or security of a facility, including, without limitation, monitoring, inspecting and securing the facility.

Sec. 2. Section 2 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 2. As used in sections 2 to 36, inclusive, of this regulation, *and section 1 of LCB File No. R125-11*, the words and terms defined in NRS 701A.300 to 701A.345, inclusive, and sections 3 to 13, inclusive, of this regulation, *and section 1 of LCB File No. R125-11* have the meanings ascribed to them in those sections.

Sec. 3. Section 3 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 3. “Abatement agreement” means an agreement executed by the ~~{Commissioner}~~ **Director** and an applicant upon the issuance of a final decision by the ~~{Commissioner}~~ **Director** that the applicant is eligible for a partial abatement of taxes.

Sec. 4. Section 9 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 9. “Partial abatement of taxes” means an abatement of a portion of:

1. Local sales and use taxes;
 2. The property taxes imposed pursuant to chapter 361 of NRS; or
 3. Both local sales and use taxes and the property taxes imposed pursuant to chapter 361 of NRS,
- ↪ authorized by NRS 701A.360 and approved by the ~~{Commissioner}~~ **Director** in a final decision issued pursuant to section 22 of this regulation.

Sec. 5. Section 12 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 12. “Significant change” means a ~~{substantive}~~ **substantial** and material change in the size or scope of a project or facility from that described in an application and includes, without limitation:

1. A change of more than 10 percent in:
 - (a) The size or location of the land on which the project or facility is located;
 - (b) The size of a building or ancillary structure;
 - (c) The generating capacity of the facility or the output capacity for a facility for the generation of process heat from solar renewable energy;
 - (d) The estimated cost of any building or ancillary structure or other property to which the partial abatement of taxes would be applicable;
 - (e) The amount of the partial abatement of taxes which the applicant is seeking; and
 - (f) The ownership of or any ownership interest in the project or facility.
2. A **substantial and material** change in the schedule or ability to meet the time commitments established in the application.
3. Any similar ~~{substantive}~~ **substantial** and material change in the information upon which an applicant relies in establishing eligibility for a partial abatement of taxes.

Sec. 6. Section 14 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 14. ~~{H-}~~ To apply for a partial abatement of taxes, an applicant must submit electronically ~~{a pre-}~~ **an** application to the ~~{Commissioner}~~ **Director** on the form and in the manner prescribed by the ~~{Commissioner}~~.

~~—2.—The Commissioner will review each pre application to make a preliminary determination of whether the applicant has provided information sufficient to demonstrate that the applicant is eligible for a partial abatement of taxes. In reviewing a pre application, the Commissioner will assume that all information provided by the applicant is true and correct. The Commissioner may request such additional information from an applicant as the Commissioner determines is necessary. If a pre application is incomplete, the Commissioner will specify a reasonable amount of time within which the applicant must complete the pre application. If the applicant does not complete the pre application within the time specified by the Commissioner, the Commissioner will reject the pre application.~~

~~—3.—The Commissioner will make a preliminary determination of an applicant's eligibility for a partial abatement of taxes and provide written notice of the preliminary determination to the applicant not later than 10 business days after the Commissioner receives a complete pre application from the applicant. A preliminary determination made by the Commissioner is not a final decision regarding the eligibility of the applicant for a partial abatement of taxes.~~

~~—4.—If the Commissioner makes a preliminary determination that an applicant may be eligible for a partial abatement of taxes, the Commissioner will:~~

~~—(a) Provide to the applicant:~~

~~——(1) Written notice that the applicant may submit an application for a partial abatement of taxes; and~~

~~——(2) An application form; and~~

~~—(b) Provide to the governing body of each county, city or town in which the applicant's project or facility is located:~~

~~——(1) A copy of the pre-application submitted by the applicant; and~~

~~——(2) A copy of the notice provided to the applicant pursuant to subparagraph (1) of paragraph (a).~~

~~—5.—If the Commissioner makes a preliminary determination that an applicant is not eligible for a partial abatement of taxes, the Commissioner will provide to the applicant written notice of the preliminary determination which must include each reason for rejecting the pre-application. An applicant whose pre-application has been rejected is not thereby precluded from submitting any new or amended pre-application pursuant to this section.~~

~~—6.—A pre-application for the construction of a facility that was commenced after July 1, 2009, may be submitted at any time, but at least 15 business days before submission of the application. After January 31, 2011, a pre-application must be submitted not later than 6 months before the applicant's anticipated first date of purchasing tangible personal property for the project.} *Director*.~~

Sec. 7. Section 16 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 16. 1. ~~{If the Commissioner provides notice to an applicant pursuant to subsection 4 of section 14 of this regulation that the applicant may submit an application for a partial abatement of taxes, the applicant must submit to the Commissioner electronically, on the form and in the manner prescribed by the Commissioner, a request for the assignment of an application filing number.} The {Commissioner} *Director* will~~

assign an application filing number to ~~{the}~~ *an* applicant not later than 2 business days after the ~~{Commissioner}~~ *Director* receives the ~~{request}~~ *application of the applicant and will inform the applicant of the application filing number as soon as practicable.* The application filing number must appear on all correspondence, applications and other documents *which relate to the application* submitted by the applicant to the ~~{Commissioner}~~ *Director.*

2. ~~{If the applicant does not submit the application within 5 business days after the assignment of the application filing number, the application filing number expires and the applicant must request a new application filing number from the Commissioner in the manner prescribed in subsection 1.}~~

~~—3.—~~ The application filing number of an application expires if the application is rejected by the Director.

3. *Upon receipt of an application, the Director will review the application for timeliness and completeness. An application is timely filed if the Director receives a completed application not later than 6 months before the applicant's projected initial date to purchase any tangible personal property for the project or the projected first day of construction of the facility. If the Director determines that an application is not timely filed, the Director may reject the application if he or she determines that the application was filed in bad faith or that the timing of the filing frustrates the purposes of sections 2 to 36, inclusive, of this regulation, and section 1 of LCB File No. R125-11. If the Director rejects an application pursuant to this subsection, the Director will provide written notice of the rejection to the applicant. The Director is not required to*

expedite the processing of any application which is not timely filed. If the Director determines that an application is incomplete, the Director will provide written notice that the application is incomplete to the applicant and will identify in the notice those items which the Director has determined are incomplete. The applicant must provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director will reject the application and will provide written notice of the rejection to the applicant.

4. An applicant whose application has been rejected pursuant to subsection 3 may submit a new application.

5. The Director will provide a copy of the application to:

- (a) The Chief of the Budget Division of the Department of Administration; and*
- (b) The Department of Taxation.*

6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director will provide a copy of the application to:

- (a) The board of county commissioners of each county in which the project or facility is located;*
- (b) The county assessor of each county in which the project or facility is located;*
- (c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;*
- (d) The governing body of each city or town in which the project or facility is located; and*

(e) The Office of Economic Development.

7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.

Sec. 8. Section 18 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 18. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to an application which is submitted to the Director ~~for the Commissioner~~ and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the application is confidential and should be redacted and protected from publication, the applicant must:

(a) Submit with the original application a redacted copy of the application which clearly identifies each item in the application that the applicant believes is confidential and should be redacted and protected from publication; and

(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. ~~{The Director shall provide the Commissioner with the redacted copy of the application submitted pursuant to paragraph (a) of subsection 1 at the time that the Director provides a copy of the original application to the Commissioner.}~~ As soon as practicable after receipt of copies of the original and redacted applications, the ~~{Commissioner}~~ **Director** will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the application; and

(b) Provide the applicant with written notice regarding the ~~{Commissioner's}~~ **Director's** determination.

3. Not later than 3 business days after an applicant receives the written notice of the ~~{Commissioner's}~~ **Director's** determination made pursuant to subsection 2, the applicant shall indicate to the ~~{Commissioner}~~ **Director** in writing with respect to each item which the ~~{Commissioner}~~ **Director** has determined may not be redacted from the application:

(a) That the applicant consents to publication of the item; or

(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the ~~{Commissioner}~~ **Director** again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the ~~{Commissioner}~~ **Director** determines that one or more items in an application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in an application are confidential and must not be made public, the ~~{Commissioner}~~ **Director** will prepare a copy of the application from which the items that will not be made public have been redacted. The ~~{Commissioner will provide the redacted application to the Director as soon as practicable. Upon receipt of the redacted application from the Commissioner, the}~~ Director ~~{shall,}~~ **will**, as soon as practicable, provide a copy of the redacted application to:

- (a) The Chief of the Budget Division of the Department of Administration;
 - (b) The Department of Taxation;
 - (c) The board of county commissioners of each county in which the project or facility is located;
 - (d) The county assessor of each county in which the project or facility is located;
 - (e) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;
 - (f) The governing body of each city or town in which the project or facility is located;
- and

(g) The ~~{Commissioner}~~ **Office of Economic Development**.

5. If an applicant submits an application which the applicant believes contains information that is confidential and should be redacted and protected from publication:

(a) A recipient of a copy of the original application:

(1) Shall not make any portion of the original application public before the ~~{Commissioner}~~ **Director** has issued a written determination concerning the items which the applicant believes are confidential and should be redacted and protected from publication; and

(2) May make public only the information contained in the redacted application prepared by the ~~{Commissioner}~~ **Director**; and

(b) A recipient of a redacted application may make public only the information contained in the redacted application prepared by the ~~{Commissioner}~~ **Director**.

6. Any of the persons or governmental entities listed in subsection 4 may request in writing that the ~~{Commissioner}~~ **Director** additionally provide to the person or governmental entity any information which the ~~{Commissioner}~~ **Director** has determined is confidential. The ~~{Commissioner}~~ **Director** may, in his or her discretion, provide the requested information. If the ~~{Commissioner}~~ **Director** provides any such information, the person or governmental entity to whom he or she provides the information must limit access to and use of the information only to those people for whom such information is necessary in the performance of their duties . ~~{, and all such}~~ **The Director will provide written notice to an applicant of any confidential information provided pursuant to this subsection. Confidential** information provided pursuant to this subsection ~~{may}~~ **must** not be made public.

Sec. 9. Section 19 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 19. In preparing ~~{the}~~ **a** fiscal ~~{notes required by}~~ **note pursuant to** NRS 701A.375, the Chief of the Budget Division of the Department of Administration and the Department of Taxation shall ensure that:

1. Any information in the application which the ~~{Commissioner}~~ **Director** has determined is confidential and must be redacted and protected from publication be viewed and used only by those persons who must have access to the redacted information for the purpose of preparing the fiscal ~~{notes;}~~ **note;** and

2. The published fiscal note does not contain any information that the ~~{Commissioner}~~ **Director** has determined is confidential and must be redacted and protected from publication.

Sec. 10. Section 20 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 20. The ~~{Commissioner}~~ **Director** will not take any action regarding a requested partial abatement of property taxes pursuant to chapter 361 of NRS on an application submitted by an owner of a facility for the generation of electricity from geothermal resources unless the ~~{Commissioner}~~ **Director** receives written notice of approval of the application from the board of county commissioners of each county in which the facility is located. The ~~{Commissioner}~~ **Director** will process an application for a requested partial abatement of sales and use taxes pursuant to the provisions of sections 2 to 36, inclusive, of this regulation ~~{ }~~, *and section 1 of LCB File No. R125-11.*

Sec. 11. Section 22 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 22. 1. Upon receipt of the documents described in sections 19 ~~{ }~~ *and* 20 ~~{and 21}~~ of this regulation, the ~~{Commissioner}~~ **Director** will set a date for a hearing on an application. The ~~{Commissioner}~~ **Director** will provide notice of the hearing to:

- (a) ~~{The Director;~~
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(e)}~~ (b) The Department of Taxation;
- ~~{(d)}~~ (c) The board of county commissioners of each county in which the project or facility is located;
- ~~{(e)}~~ (d) The county assessor of each county in which the project or facility is located;
- ~~{(f)}~~ (e) The county treasurer of each county in which the project or facility is located;
- ~~{(g)}~~ (f) The governing body of each city or town in which the project or facility is located;

- ~~{(h)}~~ (g) The ~~{Commissioner}~~ *Office of Economic Development*; and
- ~~{(i)}~~ (h) The applicant.

2. At a hearing conducted pursuant to this section, the applicant has the burden of proving by reasonable evidence that his or her application satisfies all the requirements for eligibility for a partial abatement of taxes.

3. At a hearing conducted pursuant to this section, the ~~{Commissioner}~~ *Director* or the ~~{Commissioner's}~~ *Director's* designee may ask questions of any witness.

4. If the ~~{Commissioner}~~ *Director* takes any action authorized by subsection 3 of NRS 701A.365, the ~~{Commissioner}~~ *Director* will do so at the hearing conducted pursuant to this section and will state on the record his or her reasons for so doing.

5. The ~~{Commissioner}~~ *Director* will issue findings of facts, conclusions of law and a final decision regarding an application not later than 10 business days after the date on which the hearing is concluded. The ~~{Commissioner}~~ *Director* may condition the approval of an application upon such terms as he or she determines are necessary. If the ~~{Commissioner}~~ *Director* determines that an applicant is eligible for a partial abatement of taxes, the ~~{Commissioner}~~ *Director* will execute an abatement agreement with the applicant as soon as practicable. The date on which the abatement agreement is executed by the ~~{Commissioner shall be considered}~~ *Director is* the date of the approval of the application for the purposes of NRS 701A.370.

Sec. 12. Section 23 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 23. 1. In addition to the applicant, any of the following persons or governmental entities may be a party to a hearing if the person or entity files a notice of intent to participate with the ~~{Commissioner}~~ **Director**:

- (a) ~~{The Director}~~;
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(e)}~~ **(b)** The Department of Taxation;
- ~~{(d)}~~ **(c)** The board of county commissioners of any county in which the project or facility is located;
- ~~{(e)}~~ **(d)** The county assessor of any county in which the project or facility is located;
- ~~{(f)}~~ **(e)** The county treasurer of any county in which the project or facility is located;
- ~~{(g)}~~ **(f)** The governing body of any city or town in which the project or facility is located; and
- ~~{(h)}~~ **(g)** The ~~{Commissioner}~~ **Office of Economic Development**.

2. A person or governmental entity described in paragraph (a), (b) ~~{, (e) or (h)}~~ **or (g)** of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~{Commissioner}~~ **Director** and provide a copy of the notice to the applicant not later than 5 business days after the date on which notice of the hearing is published. A person or governmental entity described in paragraph **(c)**, (d), (e) ~~{, (f)}~~ or ~~{(g)}~~ **(f)** of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~{Commissioner}~~ **Director** and provide a copy of the notice to the applicant not later than 15 business days after the date on which notice of the hearing is published. The notice of intent to participate must include, without limitation:

(a) A statement of whether the party intends to support or oppose all or any portion of the application;

(b) The legal arguments in support of the party's position; and

(c) The identification of any witnesses or evidence that the party intends to present in support of the party's position.

3. Except as otherwise provided in subsection 4, any person or governmental entity that files a notice of intent to participate may attend the hearing personally or may be represented at the hearing by an attorney, agent or other representative.

4. The ~~{Commissioner}~~ **Director** may require any person who files a notice of intent to participate to appear personally at the hearing if the ~~{Commissioner}~~ **Director** determines that the appearance will assist the ~~{Commissioner}~~ **Director** in determining whether the applicant is qualified for a partial abatement of taxes.

5. Except as otherwise provided by subsection 5 of NRS 701A.360, the Director may conduct a hearing within 15 days after notice of the hearing is published if each person and governmental entity described in subsection 1 waives in writing the right to the stated time by which to file a notice of intent to participate pursuant to subsection 2.

Sec. 13. Section 24 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 24. 1. In determining whether an applicant has established that he or she has made the capital investment required by subparagraph (2) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (2) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~{Commissioner}~~ **Director** will consider:

(a) A capital investment to be any expenditure for an asset that qualifies as “section 1245 property,” as that term is defined in 26 U.S.C. § 1245, if the asset will be associated with and an integral part of the facility; and

(b) The amount paid for such an asset, including any capitalized interest, to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

2. In determining whether an applicant has satisfied the requirements of subparagraph (1) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (1) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~Commissioner~~ **Director** will consider an employee:

(a) To be a full-time employee working on ~~the~~ construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work ~~40~~ **an average of 35** or more hours per week **over the course of the second quarter of construction while** engaged in activity that furthers ~~the~~ construction of the facility.

(b) To be a resident of Nevada if the applicant establishes that the employee possesses a current and valid Nevada driver’s license , ~~or~~ a current and valid identification card issued by the Department of Motor Vehicles ~~or~~ **any other identifying documentation which is approved by the Director.**

3. In determining whether an applicant has satisfied the average hourly wage requirements of subparagraph (3) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (3) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~Commissioner~~

Director will consider a person to be an employee of the facility if the applicant establishes that the person works on the site of the facility and is engaged in work that furthers the maintenance or operation of the facility. The ~~{Commissioner}~~ *Director* will consider an applicant to have satisfied those average hourly wage requirements if the applicant establishes that the average hourly wage paid to employees engaged in the maintenance and operation of the facility meets or exceeds 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined on a monthly basis and calculated as the total wages paid to all employees who performed maintenance and operation work on the facility for that month divided by the total number of hours worked by all employees who performed maintenance or operation work on the facility for that month, excluding management and administrative employees.

4. The ~~{Commissioner}~~ *Director* will consider an applicant to have satisfied the average hourly wage requirements of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365 if the applicant establishes that the average hourly wage paid to employees engaged in the construction of a project meets or exceeds 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined ~~{on a weekly basis and calculated for each week during the construction period as}~~ *by dividing* the total wages paid to all employees who performed

construction work on the project ~~{for that week divided}~~ *during the course of the construction period* by the total number of hours worked by all employees who performed construction work on the project ~~{for that week,}~~ *during the course of the construction period*, excluding management and administrative employees.

5. To establish that an applicant has satisfied the requirements of sub-subparagraph (II) of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or sub-subparagraph (II) of subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365, the applicant must establish *through certification by a third party, including, without limitation, a provider of healthcare or provider of insurance, or through other documentation which is approved by the Director*, that the ~~cost of providing health insurance or a~~ health insurance plan for an employee and the employee's dependents during the construction of the project includes, without limitation:

- (a) Emergency care . ~~{}~~
- (b) Inpatient and outpatient hospital services . ~~{}~~
- (c) Physicians' services . ~~{}~~
- (d) Outpatient medical services . ~~{}~~
- (e) Laboratory services . ~~{}~~
- (f) Diagnostic testing services . ~~{; and}~~

(g) ~~{For}~~ *Except as otherwise provided in this paragraph, for* an in-network provider, a minimum employer contribution of at least 80 percent of medical expenses after the employee's deductible limit is met. *The Director may approve a minimum employer*

contribution of less than 80 percent if an employer submits a written request stating reasonable grounds for such an exception.

6. An applicant may satisfy the average hourly wage requirements in subsection 3 or 4 if the applicant's employees are paid:

(a) The correct adjusted wage commencing on August 1 of each year; and

(b) If the wage has been adjusted higher, an amount equivalent to the difference between the wage the employee was actually paid and the adjusted wage for all hours worked from July 1 through July 31. A payment made under this ~~subsection~~ *paragraph* must be made ~~before September 1 of each year.~~ *not later than 30 days after publication of the average statewide hourly wage by the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

7. *As used in this section:*

(a) "Management and administrative employee" means:

(1) *An employee who is compensated on a salary or fee basis, including, without limitation, an employee who owns at least a 20 percent equity interest in the business and who is actively engaged in the management of such business, and who:*

(I) *Has the primary duty to manage the business or a department or subdivision of that business;*

(II) *Regularly directs the work of two or more other employees; and*

(III) *Has the authority to hire, fire, advance, promote or otherwise change the employment status of an employee; or*

(2) *An employee who is compensated on a salary or fee basis who:*

(I) Has the primary duty to perform office or nonmanual work related to general business operations or management for the employer or the customers of the employer; and

(II) Has the authority to exercise discretion and independent judgment with respect to matters of significance, including, without limitation, matters pertaining to accounting, finance, quality control, inspections, purchasing, compliance with applicable laws and regulations, human resources, advertising and public relations.

(b) "Provider of healthcare" means:

(1) A hospital; or

(2) A physician or dentist licensed pursuant to chapter 630, 631 or 633 of NRS.

(c) "Provider of insurance" has the meaning ascribed to it in NRS 679A.118.

Sec. 14. Section 25 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 25. 1. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of taxes, the final decision must include:

(a) The terms of the partial abatement of taxes;

(b) A certificate of eligibility; and

(c) A copy of the abatement agreement executed by the ~~{Commissioner}~~ **Director** and the applicant.

2. A partial abatement of taxes approved by the ~~{Commissioner}~~ **Director** is prospective only and must not be applied retroactively to any tax imposed before the

execution of the abatement agreement between the ~~{Commissioner}~~ **Director** and the applicant.

Sec. 15. Section 26 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 26. 1. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of sales and use taxes, unless the certificate of eligibility and abatement agreement otherwise provide, the following tangible property which will be used exclusively for the construction, operation or maintenance of the facility qualifies for the partial abatement of sales and use taxes:

(a) Materials for any building that will be located on the site of the facility, including, without limitation, residential structures if employees at the facility will be required to reside at the site of the facility;

(b) Equipment, fixtures or furniture needed and used on the site of the facility;

(c) Materials for any road, parking lot or other structure that is not a building which will be located on the site of the facility;

(d) Materials to provide water, fuel or electrical power necessary for the facility, including, without limitation, the costs inherent in tie lines and transmission lines;

(e) Equipment, fixtures or other tangible items necessary for the generation of power on the site of the facility;

(f) Motor vehicles, if the motor vehicles are specifically purchased *or leased* for exclusive use on the site of the facility;

(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically purchased *or leased* for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project ~~{and}~~ *or* operation of the facility ~~{,}~~ , *or both*;

(h) Mobile housing or office units, if the units will be located at the site of the facility throughout the construction of the project and operation of the facility;

(i) Materials, equipment, fixtures, components or other tangible items located at the site of the facility and necessary for the construction and operation of a facility for the transmission of electricity; and

(j) Materials for any road required for access along the site of a facility for the transmission of electricity that is specifically purchased for exclusive use on such roads.

2. If an applicant seeks a partial abatement of sales and use taxes for any tangible property other than the property described in subsection 1, the applicant's application must specifically include a request that the ~~{Commissioner}~~ **Director** determine whether the property for which the partial abatement is requested qualifies for the partial abatement of sales and use taxes. The ~~{Commissioner shall}~~ **Director will** consult with the Department of Taxation before making any determination on an applicant's request under this subsection. If the application includes a request pursuant to this subsection, the ~~{Commissioner's}~~ **Director's** final decision must include a determination of whether the property qualifies for the partial abatement of sales and use taxes.

Sec. 16. Section 27 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 27. If the ~~{Commissioner}~~ **Director** issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of the property taxes imposed pursuant to chapter 361 of NRS, unless the certificate of eligibility and abatement agreement otherwise provide, all real and personal property that would be taxable pursuant to chapter 361 of NRS that was purchased or leased specifically for exclusive use on the site of the facility qualifies for the partial abatement of property taxes.

Sec. 17. Section 28 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 28. 1. An applicant who has executed an abatement agreement with the ~~{Commissioner}~~ **Director** shall:

(a) Maintain a list of the names and contact information of each person, entity, contractor and subcontractor working on the construction of the project and operation of the facility who is authorized to claim the benefit of the partial abatement of taxes approved by the ~~{Commissioner}~~ **Director**;

(b) Ensure that the information contained in the list maintained pursuant to paragraph (a) is complete, current and accurate;

(c) Ensure that the list maintained pursuant to paragraph (a) is available for inspection by the authorized employees or agents of the ~~{Commissioner}~~ **Director**, the Department of Taxation, any county in which the facility is located and vendors during normal business hours; and

(d) Ensure that each person, entity, contractor or subcontractor who is named on the list maintained pursuant to paragraph (a) complies with the terms of the abatement agreement.

2. If the applicant or any other person, entity, contractor or subcontractor fails to comply with the terms of the abatement agreement, the applicant shall pay to the State of Nevada the amount of any sales and use taxes and the amount of any property taxes abated resulting from the noncompliance.

Sec. 18. Section 29 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 29. 1. Each applicant who executes an abatement agreement with the ~~{Commissioner}~~ **Director** shall file an annual compliance report with the Director on the form prescribed by the ~~{Commissioner}~~ **Director**. The applicant shall file the annual compliance report on or before the anniversary date of the abatement agreement. The annual compliance report must include all information and documentation required by the ~~{Commissioner}~~ **Director**.

2. ~~{The Director shall provide a copy of each annual compliance report filed pursuant to this section to the Commissioner as soon as practicable.}~~

~~—3.—~~ The ~~{Commissioner}~~ **Director** will review each annual compliance report as soon as practicable after receipt of the annual compliance report from the ~~{Director}~~ **applicant**. An annual compliance report which is incomplete will be rejected and shall be deemed not to have been filed. If the ~~{Commissioner}~~ **Director** determines that additional information is required to determine whether the applicant is in compliance with the

terms of the abatement agreement, the ~~{Commissioner}~~ **Director** may request additional information from the applicant.

~~{4.}~~ 3. If the ~~{Commissioner}~~ **Director** determines that the annual compliance report and any additional information requested by the ~~{Commissioner}~~ **Director** establish that the applicant is in compliance with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** will notify the applicant of the determination in writing and provide a copy of the notice to:

- (a) The Department of Taxation;
- (b) The board of county commissioners of each county in which the project or facility is located;
- (c) The county assessor of each county in which the project or facility is located; and
- (d) The county treasurer of each county in which the project or facility is located.

Sec. 19. Section 30 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 30. 1. If, at any time or for any reason, the ~~{Commissioner}~~ **Director** determines that an applicant has ceased to meet any eligibility requirement for a partial abatement of taxes or that the applicant or any other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** will notify the applicant in writing of the determination. The notice must include, without limitation:

- (a) A statement of the facts upon which the determination is based;
- (b) Identification of the provisions of NRS 701A.300 to 701A.390, inclusive, or sections 2 to 36, inclusive, of this regulation , *and section 1 of LCB File No. R125-11*, or

the terms of the abatement agreement with which the applicant or other person, entity, contractor or subcontractor is not in compliance;

(c) A time by which the applicant must respond to the ~~{Commissioner}~~ **Director** in writing;

(d) A time by which the applicant must remedy the noncompliance identified by the ~~{Commissioner}~~ **Director**;

(e) A statement that the applicant may request a hearing before the ~~{Commissioner}~~ **Director**; and

(f) Any other information that the ~~{Commissioner}~~ **Director** believes will aid the applicant in remedying the noncompliance identified by the ~~{Commissioner}~~ **Director**.

2. If an applicant requests a hearing pursuant to this section, the ~~{Commissioner}~~ **Director** will set a date, time and place for the hearing and will provide written notice of the hearing to the applicant. The ~~{Commissioner}~~ **Director** will issue written findings of fact, conclusions of law and an order after the conclusion of the hearing.

3. If, after a hearing conducted pursuant to this section and a reasonable opportunity to remedy any noncompliance, the ~~{Commissioner}~~ **Director** determines that the applicant has ceased to meet the eligibility requirements for a partial abatement of taxes or that the applicant or other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the ~~{Commissioner}~~ **Director** will immediately:

(a) Terminate the partial abatement of taxes; and

(b) In addition to the notice requirement of subsection 3 of NRS 701A.380, provide notice of the termination to:

- (1) ~~{The Director;~~
- (2) ~~{The~~ Chief of the Budget Division of the Department of Administration;
- ~~{(3)}~~ (2) The Department of Taxation;
- ~~{(4)}~~ (3) The board of county commissioners of each county in which the project or facility is located;
- ~~{(5)}~~ (4) The county assessor of each county in which the project or facility is located;
- ~~{(6)}~~ (5) The county treasurer of each county in which the project or facility is located;
- ~~{(7)}~~ (6) The governing body of each city or town in which the project or facility is located;
- ~~{(8)}~~ (7) The ~~{Commission on}~~ *Office of* Economic Development; and
- ~~{(9)}~~ (8) The applicant.

4. The ~~{Commissioner}~~ *Director* or his or her designee may conduct an on-site inspection of the project or facility and the applicant at any time to determine if the applicant is in compliance with the abatement agreement.

5. The ~~{Commissioner}~~ *Director* or his or her designee, upon a request of the board of county commissioners of any county or governing body of any city or town in which the project or facility is located, ~~{may}~~ *will* conduct an on-site inspection of the project or facility or audit of the applicant to determine if the applicant is in compliance with the

abatement agreement ~~{ }~~ *and the terms of any distribution or funding received from the Renewable Energy Fund pursuant to NRS 701A.450.*

Sec. 20. Section 31 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 31. 1. If the ~~{Commissioner}~~ *Director* determines that a project or facility is not in compliance with the abatement agreement ~~{ }~~ *pursuant to section 30 of this regulation*, the applicant shall ~~{pay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated during the period in which the project or facility was not in compliance with the abatement agreement.~~

~~—2.—Payment to the State of Nevada must be made within 60 days after the date of the written notice from the Commissioner to the applicant that payment is due. If the applicant fails timely to pay the amount of the abated taxes, the abated taxes bear interest at the rate of interest most recently established pursuant to NRS 99.040 calculated as starting on the effective date of the abatement agreement.~~

~~—3.—Any amounts paid to the State of Nevada to recoup abated local sales and use taxes and property taxes must be paid by the State of Nevada to the appropriate local agency. If the State of Nevada recovers any interest, the payment to the appropriate local agency must include an apportioned share of the interest recovered.~~

~~—4.—~~ *repay pursuant to NRS 701A.380 any abated taxes owed to the State or any political subdivision of the State not later than 60 days after receiving written notice pursuant to subsection 3 of section 30 of this regulation.*

2. The ~~{Commissioner}~~ *Director* may take any action which is authorized by law and which he or she believes is reasonably necessary to enforce the provisions of this section.

Sec. 21. Section 32 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 32. The ~~{Commissioner}~~ **Director** may require that any ~~{pre-application,}~~ application, amendment, annual report or other document submitted to the ~~{Commissioner}~~ **Director** be attested to by the owner.

Sec. 22. Section 33 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 33. 1. If an ~~{owner}~~ **applicant** intends to sell, assign or otherwise transfer all or some of the ~~{owner's}~~ interest *of the applicant* in the project or facility, the ~~{owner}~~ **applicant** must:

(a) If the sale, assignment or other transfer will occur before the hearing regarding the ~~{owner's}~~ application ~~{,}~~ *of the applicant*, amend the application to include information regarding the proposed successor in interest and the terms and conditions of the transaction.

(b) If the sale, assignment or other transfer will occur after the execution of an abatement agreement, provide written proof that the successor in interest has actual knowledge of and will fully comply with the abatement agreement.

2. Upon receipt of any of the information required by subsection 1, the ~~{Commissioner}~~ **Director** will provide a copy of the information to:

- (a) ~~{The Director,}~~
- ~~—(b)—~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(e)}~~ (b) The Department of Taxation;
- ~~{(d)}~~ (c) The board of county commissioners of any county in which the project or facility is located;

~~{{(e)}}~~ (d) The county assessor of any county in which the project or facility is located;
~~{{(f)}}~~ (e) The county treasurer of any county in which the project or facility is located;
~~{{(g)}}~~ (f) The governing body of any city or town in which the project or facility is located; and

~~{{(h)}}~~ (g) The ~~{{Commissioner}}~~ **Office of Economic Development**.

3. A successor in interest to an ~~{{owner}}~~ **applicant** is not eligible for or entitled to a partial abatement of taxes authorized by an abatement agreement executed pursuant to sections 2 to 36, inclusive, of this regulation , *and section 1 of LCB File No. R125-11*, until the ~~{{Commissioner}}~~ **Director** has received all the information required by subsection 1.

Sec. 23. Section 34 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 34. 1. ~~{{On or before the second Monday of March, June, September and December of each year, the}}~~ **The State Controller shall , *as soon as practicable*, deposit all money in his or her possession that is subject to the provisions of NRS 701A.450 into the Renewable Energy Fund in such an account or accounts as directed by the ~~{{Commissioner}}~~ Director. All money received by the ~~{{Commissioner}}~~ Director from the State Controller pursuant to NRS 701A.450 must be deposited by the ~~{{Commissioner}}~~ Director into one or more interest-bearing accounts in financial institutions located in Nevada. All records related to the account or accounts are public records and must be maintained ~~{{in the Office of}}~~ by the ~~{{Commissioner}}~~ Director.**

2. At least ~~{{annually,}}~~ ***every odd-numbered year***, the ~~{{Commissioner}}~~ **Director** will have the account or accounts audited by an independent auditor, and any report made by

the auditor is a public record and must be maintained ~~in the Office of~~ by the ~~{Commissioner}~~ **Director**.

3. ~~{On or before June 30 of each year, the Commissioner}~~ **The Director** will disburse from the account or accounts all of the money contained therein as follows:

(a) Seventy-five percent must be available to ~~{be used by the Public Utilities Commission of Nevada to}~~ offset the cost of electricity to retail customers *of a public utility* pursuant to subsection 4 of NRS 701A.450; and

(b) Twenty-five percent must be dedicated solely to be used by the ~~{Commissioner}~~ **Director** for the operation and staffing of his or her office and for purposes related to the ~~{Commissioner's}~~ **Director's** duties and obligations pursuant to chapters 701 and 701A of NRS and sections 2 to 36, inclusive, of this regulation ~~{,}~~ *and section 1 of LCB File No. R125-11.*

Sec. 24. Section 35 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 35. 1. An interested person who wishes to petition the ~~{Commissioner}~~ **Director** for the adoption, filing, amendment or repeal of a regulation in this chapter must file with the ~~{Commissioner}~~ **Director** the original and one copy of the petition.

2. The petition must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;

(c) The reason for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The ~~{Commissioner}~~ **Director** may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if:

- (a) The original petition is not accompanied by one copy of the petition; or
- (b) The petition does not contain the information required by subsection 2.

4. The ~~{Commissioner}~~ **Director** will notify the petitioner in writing of his or her decision within 30 days after the petition is filed.

Sec. 25. Section 36 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 36. 1. Except as otherwise provided in subsection 4, an interested person may petition the ~~{Commissioner}~~ **Director** to issue a declaratory order or advisory opinion concerning the applicability of a statute or regulation within the ~~{Commissioner's}~~ **Director's** purview or jurisdiction. The original and one copy of the petition must be filed with the ~~{Commissioner}~~ **Director**.

2. The petition must include:

- (a) The name and address of the petitioner;
- (b) The reason for requesting the order or opinion;
- (c) A statement of facts that support the petition; and
- (d) A clear and concise statement of the question to be decided by the ~~{Commissioner}~~ **Director** and the relief sought by the petitioner.

3. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.

4. The ~~{Commissioner}~~ **Director** may refuse to review a petition which requests that he or she issue a declaratory order or advisory opinion if:

- (a) The original petition is not accompanied by one copy of the petition;
- (b) The petition does not contain the information required by subsection 2; or
- (c) The petition seeks a declaratory order or an advisory opinion prohibited by subsection 3.

5. The ~~{Commissioner}~~ **Director** may:

- (a) Conduct an informal hearing to determine issues of fact or to hear arguments relating to the petition and may enter reasonable orders that govern the conduct of such a hearing.
- (b) Request that the petitioner provide additional information or arguments relating to the petition.
- (c) Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.
- (d) Consider relevant decisions that have been issued by the ~~{Commissioner}~~ **Director** which apply or interpret the statute, regulation or decision in question.
- (e) Enter any reasonable order to assist his or her review of the petition.

6. The ~~{Commissioner}~~ **Director** will maintain a record of the order or opinion that is indexed by subject matter and mail a copy of the order or opinion to the petitioner within 60 days after:

- (a) The petition is filed;
- (b) An informal hearing is conducted; or
- (c) Any additional information or written argument is received by the ~~{Commissioner}~~ **Director**,

↪ whichever occurs later.

7. The ~~{Commissioner}~~ **Director** will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the staff of the ~~{Commissioner}~~ **Director** is not a decision or an advisory opinion of the ~~{Commissioner}~~ **Director**.

Sec. 26. Sections 10, 15, 17 and 21 of LCB File No. R094-10 are hereby repealed.

Sec. 27. The provisions of section 1 of this regulation and sections 2 to 36, inclusive, of LCB File No. R094-10, as amended by this regulation, do not apply to any application which is submitted to the Director for approval before the effective date of this regulation.

TEXT OF REPEALED SECTIONS

Section 10 of LCB File No. R094-10:

Sec. 10. “Pre-application” means a proposal submitted pursuant to section 14 of this regulation and includes, without limitation, the completed pre-application form and all supporting documents.

Section 15 of LCB File No. R094-10:

Sec. 15. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to a pre-application which is submitted to the Commissioner and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the pre-application is confidential and should be redacted and protected from publication, the applicant must:

(a) Submit with the original pre-application a redacted copy of the pre-application which clearly identifies each item in the pre-application that the applicant believes is confidential and should be redacted and protected from publication; and

(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. As soon as practicable after receipt of the original and redacted pre-applications, the Commissioner will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the pre-application; and

(b) Provide the applicant with written notice regarding the Commissioner’s determination.

3. Not later than 3 business days after an applicant receives the written notice of the Commissioner's determination made pursuant to subsection 2, the applicant shall indicate to the Commissioner in writing with respect to each item which the Commissioner has determined may not be redacted from the pre-application:

(a) That the applicant consents to publication of the item; or

(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the Commissioner again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the pre-application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the Commissioner determines that one or more items in a pre-application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in a pre-application are confidential and must not be made public, the Commissioner will prepare a copy of the pre-application from which the items that will not be made public have been redacted. The Commissioner will make public only the redacted pre-application.

Section 17 of LCB File No. R094-10:

Sec. 17. 1. An applicant who has received written notice from the Commissioner that the applicant may submit an application for a partial abatement of taxes must submit electronically a complete application to the Director on the form provided by the Commissioner and in the manner prescribed by the Director and the Commissioner.

2. The application must be submitted not later than 5 business days after the applicant receives an application filing number pursuant to section 16 of this regulation.

3. Not later than 5 business days after receipt of an application, the Director shall review the application for timeliness and completeness. If the Director determines that an application is not timely filed, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner. For the purpose of determining whether an application is timely filed, the date on which the Director determines the application to be complete shall be deemed to be the date of receipt of the application. If the Director determines that an application is incomplete, the Director shall provide written notice that the application is incomplete to the applicant and the Commissioner and shall identify in the notice those items which the Director has determined are incomplete. The applicant shall provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner.

4. An applicant whose application has been rejected pursuant to subsection 3 may request a new application filing number from the Commissioner and submit a new application.

5. The Director shall provide a copy of the application to:

- (a) The Commissioner;
- (b) The Chief of the Budget Division of the Department of Administration; and
- (c) The Department of Taxation.

6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director shall provide a copy of the application to:

(a) The board of county commissioners of each county in which the project or facility is located;

(b) The county assessor of each county in which the project or facility is located;

(c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;

(d) The governing body of each city or town in which the project or facility is located; and

(e) The Commission on Economic Development.

7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.

Section 21 of LCB File No. R094-10:

Sec. 21. Upon receipt of the fiscal notes prepared pursuant to NRS 701A.375 and, if required by NRS 701A.365, the written notice of approval of an application from the board of county commissioners of each county in which the facility is located, the Director shall provide the documents to the Commissioner within 2 business days.

NRS 701A.360-390

NRS 701A.360-390

NRS 701A.360 Application for partial abatement; ineligible facilities; required notices; public hearing on application. [Effective through June 30, 2012.]

1. A person who intends to locate a facility for the generation of process heat from solar renewable energy, a wholesale facility for the generation of electricity from renewable energy, a facility for the generation of electricity from geothermal resources or a facility for the transmission of electricity produced from renewable energy or geothermal resources in this State may apply to the Director for a partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS.

2. A facility that is owned, operated, leased or otherwise controlled by a governmental entity is not eligible for an abatement pursuant to NRS 701A.300 to 701A.390, inclusive.

3. As soon as practicable after the Director receives an application for a partial abatement, the Director shall forward a copy of the application to:

- (a) The Chief of the Budget Division of the Department of Administration;
- (b) The Department of Taxation;
- (c) The board of county commissioners;
- (d) The county assessor;
- (e) The county treasurer; and
- (f) The Commission on Economic Development.

4. With the copy of the application forwarded to the county treasurer, the Director shall include a notice that the local jurisdiction may request a presentation regarding the facility. A request for a presentation must be made within 30 days after receipt of the application.

5. The Director shall hold a public hearing on the application. The hearing must not be held earlier than 30 days after all persons listed in subsection 3 have received a copy of the application.

(Added to NRS by 2009, 2004; A 2011, 2070)

NRS 701A.360 Application for partial abatement; ineligible facilities; required notices; public hearing on application. [Effective July 1, 2012, through June 30, 2049.]

1. A person who intends to locate a facility for the generation of process heat from solar renewable energy, a wholesale facility for the generation of electricity from renewable energy, a facility for the generation of electricity from geothermal resources or a facility for the transmission of electricity produced from renewable energy or geothermal resources in this State may apply to the Director for a partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS.

2. A facility that is owned, operated, leased or otherwise controlled by a governmental entity is not eligible for an abatement pursuant to NRS 701A.300 to 701A.390, inclusive.

3. As soon as practicable after the Director receives an application for a partial abatement, the Director shall forward a copy of the application to:

- (a) The Chief of the Budget Division of the Department of Administration;
- (b) The Department of Taxation;
- (c) The board of county commissioners;
- (d) The county assessor;
- (e) The county treasurer; and
- (f) The Office of Economic Development.

4. With the copy of the application forwarded to the county treasurer, the Director shall include a notice that the local jurisdiction may request a presentation regarding the facility. A request for a presentation must be made within 30 days after receipt of the application.

5. The Director shall hold a public hearing on the application. The hearing must not be held earlier than 30 days after all persons listed in subsection 3 have received a copy of the application.

(Added to NRS by 2009, 2004; A 2011, 2070, 3478, effective July 1, 2012)

NRS 701A.365 General requirements for approval of application; specific requirements for certain geothermal facilities; exceptions; additional requirements. [Effective through June 30, 2012.]

1. Except as otherwise provided in subsection 2, the Director shall approve an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, if the Director makes the following determinations:

(a) The applicant has executed an agreement with the Director which must:

(1) State that the facility will, after the date on which a certificate of eligibility for the abatement is issued pursuant to NRS 701A.370, continue in operation in this State for a period specified by the Director, which must be at least 10 years, and will continue to meet the eligibility requirements for the abatement; and

(2) Bind the successors in interest in the facility for the specified period.

(b) The facility is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the facility operates.

(c) No funding is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefor, except any private activity bonds as defined in 26 U.S.C. § 141.

(d) If the facility will be located in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the facility meets the following requirements:

(1) There will be 75 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Director for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least \$10,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Director by regulation pursuant to NRS 701A.390.

(e) If the facility will be located in a county whose population is less than 100,000 or a city whose population is less than 60,000, the facility meets the following requirements:

(1) There will be 50 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Director for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least \$3,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Director by regulation pursuant to NRS 701A.390.

(f) The financial benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the facility in this State will exceed the loss of tax revenue that will result from the abatement.

2. The Director shall not approve an application for a partial abatement of the taxes imposed pursuant to chapter 361 of NRS submitted pursuant to NRS 701A.360 by a facility for the generation of electricity from geothermal resources unless the application is approved pursuant to this subsection. The board of county commissioners of a

county must approve or deny the application not later than 30 days after the board receives a copy of the application. The board of county commissioners must not condition the approval of the application on a requirement that the facility for the generation of electricity from geothermal resources agree to purchase, lease or otherwise acquire in its own name or on behalf of the county any infrastructure, equipment, facilities or other property in the county that is not directly related to or otherwise necessary for the construction and operation of the facility. If the board of county commissioners does not approve or deny the application within 30 days after the board receives the application, the application shall be deemed denied.

3. Notwithstanding the provisions of subsection 1, the Director may, if the Director determines that such action is necessary:

(a) Approve an application for a partial abatement for a facility that does not meet the requirements set forth in paragraph (d) or (e) of subsection 1; or

(b) Add additional requirements that a facility must meet to qualify for a partial abatement.

(Added to NRS by 2009, 2004; A 2011, 2071)

NRS 701A.365 General requirements for approval of application; specific requirements for certain geothermal facilities; exceptions; additional requirements. [Effective July 1, 2012, through June 30, 2049.]

1. Except as otherwise provided in subsection 2, the Director, in consultation with the Office of Economic Development, shall approve an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, if the Director, in consultation with the Office of Economic Development, makes the following determinations:

(a) The applicant has executed an agreement with the Director which must:

(1) State that the facility will, after the date on which a certificate of eligibility for the abatement is issued pursuant to NRS 701A.370, continue in operation in this State for a period specified by the Director, which must be at least 10 years, and will continue to meet the eligibility requirements for the abatement; and

(2) Bind the successors in interest in the facility for the specified period.

(b) The facility is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the facility operates.

(c) No funding is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefor, except any private activity bonds as defined in 26 U.S.C. § 141.

(d) If the facility will be located in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the facility meets the following requirements:

(1) There will be 75 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Director for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least \$10,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Director by regulation pursuant to NRS 701A.390.

(e) If the facility will be located in a county whose population is less than 100,000 or a city whose population is less than 60,000, the facility meets the following requirements:

(1) There will be 50 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Director for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least \$3,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The employees working on the construction of the facility must be provided a health insurance plan that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost of the benefits provided to the employees working on the construction of the facility will meet the minimum requirements for benefits established by the Director by regulation pursuant to NRS 701A.390.

(f) The financial benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the facility in this State will exceed the loss of tax revenue that will result from the abatement.

(g) The facility is consistent with the State Plan for Economic Development developed by the Executive Director of the Office of Economic Development pursuant to subsection 2 of NRS 231.053.

2. The Director shall not approve an application for a partial abatement of the taxes imposed pursuant to chapter 361 of NRS submitted pursuant to NRS 701A.360 by a facility for the generation of electricity from geothermal resources unless the application is approved pursuant to this subsection. The board of county commissioners of a county must approve or deny the application not later than 30 days after the board receives a copy of the application. The board of county commissioners must not condition the approval of the application on a requirement that the facility for the generation of electricity from geothermal resources agree to purchase, lease or otherwise acquire in its own name or on behalf of the county any infrastructure, equipment, facilities or other property in the county that is not directly related to or otherwise necessary for the construction and operation of the facility. If the board of county commissioners does not approve or deny the application within 30 days after the board receives the application, the application shall be deemed denied.

3. Notwithstanding the provisions of subsection 1, the Director, in consultation with the Office of Economic Development, may, if the Director, in consultation with the Office, determines that such action is necessary:

(a) Approve an application for a partial abatement for a facility that does not meet the requirements set forth in paragraph (d) or (e) of subsection 1; or

(b) Add additional requirements that a facility must meet to qualify for a partial abatement.

4. The Director shall cooperate with the Office of Economic Development in carrying out the provisions of this section.

5. The Director shall submit to the Office of Economic Development an annual report, at such a time and containing such information as the Office may require, regarding the partial abatements granted pursuant to this section.

(Added to NRS by 2009, 2004; A 2011, 2071, 3479, effective July 1, 2012)

NRS 701A.370 Duration, amount and other terms of partial abatement; notice of abatement; distribution of certificate of eligibility by Director. [Effective through June 30, 2012.]

1. If the Director approves an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the partial abatement must:

(1) Be for a duration of the 20 fiscal years immediately following the date of approval of the application;

(2) Be equal to 55 percent of the taxes on real and personal property payable by the facility each year; and

(3) Not apply during any period in which the facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722.

(b) Local sales and use taxes:

(1) The partial abatement must:

(I) Be for the 3 years beginning on the date of approval of the application;

(II) Be equal to that portion of the combined rate of all the local sales and use taxes payable by the facility each year which exceeds 0.6 percent; and

(III) Not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes.

(2) The Department of Taxation shall issue to the facility a document certifying the abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of 2.6 percent.

2. Upon approving an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, the Director shall immediately forward a certificate of eligibility for the abatement to:

- (a) The Department of Taxation;
- (b) The board of county commissioners;
- (c) The county assessor;
- (d) The county treasurer; and
- (e) The Commission on Economic Development.

(Added to NRS by 2009, 2004; A 2009, 2010; 2011, 2073, 2896)

NRS 701A.370 Duration, amount and other terms of partial abatement; notice of abatement; distribution of certificate of eligibility by Director. [Effective July 1, 2012, through June 30, 2013.]

1. If the Director approves an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the partial abatement must:

- (1) Be for a duration of the 20 fiscal years immediately following the date of approval of the application;
- (2) Be equal to 55 percent of the taxes on real and personal property payable by the facility each year; and
- (3) Not apply during any period in which the facility is receiving another abatement or exemption from

property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722.

(b) Local sales and use taxes:

(1) The partial abatement must:

(I) Be for the 3 years beginning on the date of approval of the application;

(II) Be equal to that portion of the combined rate of all the local sales and use taxes payable by the facility each year which exceeds 0.6 percent; and

(III) Not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes.

(2) The Department of Taxation shall issue to the facility a document certifying the abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of 2.6 percent.

2. Upon approving an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, the Director shall immediately forward a certificate of eligibility for the abatement to:

- (a) The Department of Taxation;
- (b) The board of county commissioners;
- (c) The county assessor;
- (d) The county treasurer; and
- (e) The Office of Economic Development.

(Added to NRS by 2009, 2004; A 2009, 2010; 2011, 2073, 2896, 3481, effective July 1, 2012)

NRS 701A.370 Duration, amount and other terms of partial abatement; notice of abatement; distribution of certificate of eligibility by Director. [Effective July 1, 2013, through June 30, 2049.]

1. If the Director approves an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, of:

(a) Property taxes imposed pursuant to chapter 361 of NRS, the partial abatement must:

- (1) Be for a duration of the 20 fiscal years immediately following the date of approval of the application;
- (2) Be equal to 55 percent of the taxes on real and personal property payable by the facility each year; and
- (3) Not apply during any period in which the facility is receiving another abatement or exemption from

property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722.

(b) Local sales and use taxes:

(1) The partial abatement must:

(I) Be for the 3 years beginning on the date of approval of the application;

(II) Be equal to that portion of the combined rate of all the local sales and use taxes payable by the facility each year which exceeds 0.25 percent; and

(III) Not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes.

(2) The Department of Taxation shall issue to the facility a document certifying the abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of 2.25 percent.

2. Upon approving an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, the Director shall immediately forward a certificate of eligibility for the abatement to:

- (a) The Department of Taxation;
- (b) The board of county commissioners;
- (c) The county assessor;
- (d) The county treasurer; and
- (e) The Office of Economic Development.

(Added to NRS by 2009, 2004; A 2009, 2010; 2011, 2073, 2896, 3481, effective July 1, 2013)

NRS 701A.375 Publication of fiscal notes; distribution of certificate of eligibility by Department of Taxation. [Effective through June 30, 2012.]

1. The Director may, with the assistance of the Chief of the Budget Division of the Department of Administration and the Department of Taxation, publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State and on each affected local government. If the Director publishes a fiscal note that estimates the fiscal impact of the partial abatement on local government, the Director shall forward a copy of the fiscal note to each affected local government.

2. As soon as practicable after receiving a copy of a certificate of eligibility pursuant to NRS 701A.370, the Department of Taxation shall forward a copy of the certificate to each affected local government.

(Added to NRS by 2009, 2004; A 2011, 2074)

NRS 701A.375 Publication of fiscal notes; distribution of certificate of eligibility by Department of Taxation. [Effective from July 1, 2012, through June 30, 2049.]

1. The Director may, with the assistance of the Chief of the Budget Division of the Department of Administration and the Department of Taxation, publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State and on each affected local government. If the Director publishes a fiscal note that estimates the fiscal impact of the partial abatement on local government, the Director shall forward a copy of the fiscal note to each affected local government and to the Office of Economic Development.

2. As soon as practicable after receiving a copy of a certificate of eligibility pursuant to NRS 701A.370, the Department of Taxation shall forward a copy of the certificate to each affected local government.

(Added to NRS by 2009, 2004; A 2011, 2074, 3482, effective July 1, 2012)

NRS 701A.380 Termination of partial abatement for noncompliance; opportunity to cure noncompliance; required notices. [Effective through June 30, 2012.]

1. A partial abatement approved by the Director pursuant to NRS 701A.300 to 701A.390, inclusive, terminates upon any determination by the Director that the facility has ceased to meet any eligibility requirements for the abatement.

2. The Director shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the facility has ceased to meet those requirements.

3. The Director shall immediately provide notice of each determination of termination to:

(a) The Department of Taxation, which shall immediately notify each affected local government of the determination;

- (b) The board of county commissioners;
- (c) The county assessor;
- (d) The county treasurer; and
- (e) The Commission on Economic Development.

(Added to NRS by 2009, 2004; A 2011, 102, 2074)

NRS 701A.380 Termination of partial abatement for noncompliance; opportunity to cure noncompliance; required notices; repayment of taxes after termination. [Effective from July 1, 2012, through June 30, 2049.]

1. A partial abatement approved by the Director pursuant to NRS 701A.300 to 701A.390, inclusive, terminates upon any determination by the Director that the facility has ceased to meet any eligibility requirements for the abatement.

2. The Director shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the facility has ceased to meet those requirements.

3. The Director shall immediately provide notice of each determination of termination to:

(a) The Department of Taxation, which shall immediately notify each affected local government of the determination;

(b) The board of county commissioners;

(c) The county assessor;

(d) The county treasurer; and

(e) The Office of Economic Development.

4. A facility whose partial abatement is terminated pursuant to this section shall repay to:

(a) The county treasurer the amount of the exemption from property taxes imposed pursuant to chapter 361 of NRS; and

(b) The Department of Taxation the amount of the exemption from local sales and use taxes, that was allowed pursuant to this section before the date of that termination. Except as otherwise provided in NRS 360.232 and 360.320, the facility shall, in addition to the amount of the exemption required to be paid pursuant to this subsection, pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the partial abatement not been approved until the date of payment of the tax.

(Added to NRS by 2009, 2004; A 2011, 102, 2074, 3482, effective July 1, 2012)

NRS 701A.385 Allocation and distribution of certain taxes collected from facilities receiving partial abatement. [Effective through June 30, 2049.] Notwithstanding any statutory provision to the contrary, if the Director approves an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, of:

1. Property taxes imposed pursuant to chapter 361 of NRS, the amount of all the property taxes which are collected from the facility for the period of the abatement must be allocated and distributed in such a manner that:

(a) Forty-five percent of that amount is deposited in the Renewable Energy Fund created by NRS 701A.450; and

(b) Fifty-five percent of that amount is distributed to the local governmental entities that would otherwise be entitled to receive those taxes in proportion to the relative amount of those taxes those entities would otherwise be entitled to receive.

2. Local sales and use taxes, the State Controller shall allocate, transfer and remit an amount equal to all the sales and use taxes imposed in this State and collected from the facility for the period of the abatement in the same manner as if that amount consisted solely of the proceeds of taxes imposed by NRS 374.110 and 374.190.

(Added to NRS by 2009, 2004; A 2009, 2010; 2011, 2074)

NRS 701A.390 Regulations. [Effective through June 30, 2012.] The Director:

1. Shall adopt regulations:

(a) Prescribing the minimum level of benefits that a facility must provide to its employees if the facility is going to use benefits paid to employees as a basis to qualify for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive;

(b) Prescribing such requirements for an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, as will ensure that all information and other documentation necessary for the Director to make an appropriate determination is filed with the Director;

(c) Requiring each recipient of a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, to file annually with the Director such information and documentation as may be necessary for the Director to determine whether the recipient is in compliance with any eligibility requirements for the abatement; and

(d) Regarding the capital investment that a facility must make to meet the requirement set forth in paragraph (d) or (e) of subsection 1 of NRS 701A.365; and

2. May adopt such other regulations as the Director determines to be necessary to carry out the provisions of NRS 701A.300 to 701A.390, inclusive.

(Added to NRS by 2009, 2004; A 2011, 2075)

NRS 701A.390 Regulations. [Effective from July 1, 2012, through June 30, 2049.] The Director:

1. Shall adopt regulations:

(a) Prescribing the minimum level of benefits that a facility must provide to its employees if the facility is going to use benefits paid to employees as a basis to qualify for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive;

(b) Prescribing such requirements for an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, as will ensure that all information and other documentation necessary for the Director, in consultation with the Office of Economic Development, to make an appropriate determination is filed with the Director;

(c) Requiring each recipient of a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, to file annually with the Director such information and documentation as may be necessary for the Director to determine whether the recipient is in compliance with any eligibility requirements for the abatement; and

(d) Regarding the capital investment that a facility must make to meet the requirement set forth in paragraph (d) or (e) of subsection 1 of NRS 701A.365; and

2. May adopt such other regulations as the Director determines to be necessary to carry out the provisions of NRS 701A.300 to 701A.390, inclusive.

(Added to NRS by 2009, 2004; A 2011, 2075, 3483, effective July 1, 2012)

Public Comment



MCDONALD-CARANO-WILSON³

**COMMENTS REGARDING THE
REVISED PROPOSED REGULATION OF THE DIRECTOR OF THE OFFICE OF
ENERGY
LCB file No. R125-11**

1. Section 7: Sec. 16(3) regarding “Timeliness” – The Director should not simply reject the application if it is not timely filed. The regulation should provide the Director with some flexibility to address situations where the application is not timely filed, but the applicant is aware that the sales and use tax abatement is not available for purchases made prior to the abatement approval. Simply filing the application late should not limit the applicant’s ability to benefit from the property tax abatement or the sales and use tax abatement associated with purchases made after the abatement is approved. Maybe the regulation could require untimely applicants to provide something in writing acknowledging that they understand that purchases made prior to the approval are not eligible for the sales and use tax abatement.
2. Section 13: Section 24(1)(a) regarding “within this State” language – There needs to be clarification that, by adding the language “within this State,” the regulation is not adding an additional requirement that the minimum capital expenditure be purchased from vendors located in Nevada. This would result in a new requirement being added to the abatement program that was not contemplated by the Nevada Legislature. I am unaware of anything in the legislative history that would support this interpretation. The capital investment language was borrowed from the economic development abatement language found at NRS 360.750. The “in this State” language has never been applied to require the investment be made from vendors located in Nevada. Rather, the language only requires that the minimum capital investment be made on items used at the facility in Nevada. The minimum capital investment is made in Nevada when the facilities are built in Nevada. By virtue of locating the facility in Nevada, the developers are making an investment “in this State.” Nevada imposes both sales tax and property tax on the facilities because they are located “in this State.” If this language is read to require the capital expenditure be made from vendors located in Nevada, then very few facilities would qualify for abatement. Simply put, there are not many manufacturers located in Nevada that produce the type of equipment needed to build the types of facilities the abatement is designed to encourage.
3. Section 13: Section 24(2)(a) regarding full-time employee requirement – The language “*or was regularly scheduled to work*” should not be removed from the regulation. This language was included in the original regulation to address situations where construction employees are scheduled to work, but cannot actually work for some reason. For example, sick days, unexcused absences, weather conditions making it impossible to work, etc. Without this flexibility, an abatement recipient can technically be out-of-

compliance because of actions of employees that are beyond the abatement recipient's control. On a separate note, employees should be considered full-time employees without working 40 hours per week. It may be helpful to consult with the Nevada Department of Employment, Training and Rehabilitation to identify a definition of full-time employee that is consistent with employment standards. Many employees receive full-time benefits and are treated as full-time employees without working 40 hours per week.

4. Section 13: Section 24(7) regarding definition of "management and administrative employee" – This definition of "management and administrative employee" seems to be overly broad and describes employees that should not be considered "management". There are many employees in the construction trades that regularly direct the work of two or more other employees, but are not management. It is unlikely that the Nevada Legislature intended to disallow the wages of a foreman who is in charge of two other crew members who are working on installing solar panels, installing wind turbines, grading roads, or other types of manual construction labor. This definition should not disqualify "boots-on-the-ground" type employees that do not have a 20% equity interest.
5. Section 13: Section 24(4) regarding determination of 150% wage – It may be worth adding additional language to this portion of the regulation that allows flexibility when documenting compliance with the average hourly wage requirement. The regulation currently provides that when making the determination of whether the average hourly wage requirement is satisfied, the Director will review the average wage "determined on a weekly basis and calculated for each week during the construction period as the total wages paid to all employees who performed construction work on the project for that week divided by the total number of hours worked by all employees who performed construction work on the project for that week . . ." The statute only requires that "[t]he average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage . . ." See NRS 71A.365(1)(d)(4). The statute does not require that the minimum wage requirement be satisfied during each individual week during the construction of a project. In the event that the average wage actually paid during a particular week during the construction of the project does not satisfy the minimum requirement, abatement recipients should be allowed to demonstrate that the average wage paid over the course of construction did actually meet the minimum requirement. It is possible that a project might not meet the minimum requirement during specific periods during the construction, but paid more than the minimum required wages over the course of the construction when considering all the wages paid.
6. Section 22: Section 33(1) regarding change in ownership of the facility – There should be some clarification regarding who is the "owner" of the facility. If a new parent corporation purchases the operating entity that owns the facility, but the operating entity remains in existence, and remains obligated to comply with the abatement requirements, has the "owner" transferred its interest? The operating entity would not be required to get new business licenses or take other steps that would customarily be required upon the change of ownership. The interests of the State are no less protected following the change of a parent corporation than they were prior to the change.

Suzanne Martens

From: Brent Keele [bkeele@mcdonaldcarano.com]
Sent: Wednesday, August 29, 2012 10:41 AM
To: Cassandra P. Joseph; Stacey Crowley
Cc: Suzanne Martens
Subject: Abatement Regulation Clarification/Question

Hello Stacey and Cassie,

I just noticed something in the language of LCB File No. R125-11 that caused me a little concern. Section 13 revises Section 24 of R094-10 in a manner that may cause some confusion. Specifically, Section 24(2)(a) changes the requirements to be a full-time employee working on the construction of the facility from 40 hours to 35 hours. My concern about the language is highlighted below:

"... the Director will consider an employee: (a) To be a full-time employee working on construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work an average of 35 or more hours per week over the course of the second quarter of construction while engaged in activity that furthers construction of the facility."

This requirement cannot be read to only count employees that are working on the facility during the entire course of the second quarter. Many subcontractors are brought in to do their specific piece of the work which may only take a few weeks or a month. These jobs should be counted for the period they are working on the facility if they are working, or are scheduled to work, at least 35 hours per week while they are there. The statute only requires that you have 50 (or 75) full-time employees working on the construction of the facility during the second quarter of construction. It does not require that they be the same employees. Developers should be able to use various subcontractors to complete specialized work, and count those individuals for each week in which the individuals are working over 35 hours per week.

For example, "Developer A" should be able to hire "Subcontractor I" who has 50 full-time employees to do cement foundation work during weeks 1-5 of the second quarter. "Developer A" should then be able to hire a separate "Subcontractor II" who has 50 different full-time employees installing turbines or panels during weeks 6-13 of the second quarter. For purposes of abatement compliance, the project had at least 50 full-time employees working on the construction of the facility during the entire second quarter of construction. My concern is that the language, "over the course of the second quarter of construction", may cause some confusion regarding whether a project like that describe in this paragraph has complied.

Can you confirm that the intent of this language is not to require an employee to be working on the construction of the facility throughout the entire second quarter of construction in order to be counted as a full-time employee working on the construction of the facility? Such a reading of the language could potentially cause huge problems for almost all projects who have been awarded abatements.

Please call me if you have any questions or want to discuss this issue in more detail.

Thank you,

Brent M. T. Keele | Attorney

MCDONALD CARANO WILSON LLP

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From: Scott Scherer [mailto:sscherer@hollandhart.com]

Sent: Thursday, November 10, 2011 12:58 PM

To: 'Lorayn Walser'; 'Brent Keele'; Cassandra P. Joseph; 'dwayment@slettininc.com'; 'joe.cusanelli@enel.com'; 'jhicks@bhfs.com'; 'mbecker@sletteninc.com'; 'melanie.falls@firstsolar.com'; 'paulthomsen@ormat.com'; 'sanderson@ormat.com'; 'terry.page@enel.com'; Mitsuyo Maser

Cc: Stacey Crowley

Subject: RE: 11/02/11 Informal Meeting

Attached are proposed definitions of “management” employee and “administrative” employee. I have adapted the criteria under the Fair Labor Standards Act, because that is familiar to most employers. As promised, I am distributing these to everyone who attended the meeting for comment.

Scott Scherer
Holland & Hart LLP
777 E. William Street, Suite 200
Carson City, NV 89701
Direct Dial (775) 684-6011

Proposed Definition of “Management” and “Administrative” Employees

At the recent workshop conducted by the Nevada State Office of Energy, we were asked to propose definitions of “management” and “administrative” employees. These proposed definitions are developed primarily from the criteria used to determine whether one is an “executive” or an “administrative” employee under the federal Fair Labor Standards Act. These criteria are familiar to most employers, as they are used in determining whether certain employees are exempt from the overtime requirements.

For the purposes of determining compliance with the requirements of NRS 701A.300 through NRS 701A.390, “Management employee” means an employee whose primary job is managing an enterprise, or a department or subdivision of that enterprise, who regularly directs the work of two or more other employees and who has authority with regard to hiring, firing, advancement, promotion or other change in status with regard to employees and includes, without limitation, employees who own at least twenty percent equity interest in the enterprise by which they are employed and are actively engaged in management of that enterprise.

For the purposes of determining compliance with the requirements of NRS 701A.300 through NRS 701A.390, “Administrative employee” means an employee whose primary duty is the performance of office or non-manual work related to general business operations or management for the employer or the employer’s customers and includes the exercise of discretion and independent judgment with respect to matters of significance, including but not limited to accounting, finance, quality control, inspections, purchasing, legal, regulatory and environmental compliance, human resources, advertising and public relations.

From: Hicks, Joshua J. [mailto:JHicks@BHFS.com]
Sent: Tuesday, October 11, 2011 7:22 AM
To: Cassandra P. Joseph
Subject: RE: R094-10 for energy abatement program

Here are some of the issues for potential regulatory consideration:

1. Excluding certain site pre-construction work from "construction on the facility" as used in NRS 701A.365.

There are a few reasons for this. First, the statutes envision that the heaviest period of construction is the second quarter after construction starts, as that is when the minimum number of construction employees and related residency requirements is applicable. There is some pre-construction work that occurs well before the real construction work starts - such as doing some engineering on the site, drilling a well, doing environmental work (such as installing tortoise fencing to protect against damage to the desert tortoise), geotechnical services (such as soil testing) and data systems testing. That type of pre-construction work is often done months in advance of the real ground breaking, but if it is considered the first quarter of construction, there are real problems satisfying the statutory requirements for the second quarter of construction. It's always been my thought that preparatory work that is typical work for any kind of development, whether it is renewable or not, is not the kind of construction work that is subject to the statutory conditions. The statutes are trying to tie the conditions to actual work on a renewable energy project

The Energy Office has been very reasonable in this regard and we've cleared with them that this type of preparatory work is not considered the start of construction. But I think putting it into a regulation would add greater clarity for all applicants and would be consistent with the statutes and legislative intent.

2. Wages and Inclusion/Exclusion of Benefits

Depending on what the minutes show from the existing definition of the term in regulation (Sec. 13), there may be grounds to amend this definition as suggested by Sletten at our meeting.

3. True Up Period for Wage Adjustments

Sec. 24(6) of the regulations addresses annual changes to the average hourly wage requirements. The regulation envisions that updated hourly wage levels are issued by DETR on July 1 and requires that corrected wages be in place by August 1. This year, DETR didn't issue the updated wage requirements until well into September. I think it would make sense to amend this regulation to state that the Commissioner will announce the new wage rates after being notified by DETR, and that everybody has 30 days from the date of the announcement to get the new rates in place.

4. Fiscal Notes

Fiscal notes are designed for the very simple purpose of determining whether the financial benefits and capital investment exceeds any abated tax revenue. NRS 701A.365(1)(f). The two issues we have encountered on the fiscal notes are (1) timeliness of issuance and (2) over analysis of property tax impacts. With respect to the first issue, one of the longest delays in the application process was awaiting the final fiscal notes. Granted, the Department was stretched thin and it was during the run up to a legislative session, but the analysis is very straightforward and is based on information provided in the application. It might be worth considering a regulation that if fiscal notes are not issued within 30 days, the applicant is presumed to have met the requirements in 701A.365(1)(f). Regardless, the benefits and capital investment will by definition always exceed the abated tax revenue, because the tax amount is always going to be a percentage of the overall capital investment. So the fiscal notes are really unnecessary in the first place and an application should not be unnecessarily held up waiting for the notes.

With respect to the over-analysis issue, this goes to the property tax treatment of renewable projects. There is an ongoing debate with the Tax Department over whether renewable projects should be classified as personal or real

property for property tax purposes. Historically, they have been treated as personal property although the Department has apparently taken a different approach. This is currently being worked out in the regulatory process with the Tax Department, but if you examine the property tax fiscal notes issued by the Department, you will see that a substantial amount of effort is devoted to advocacy that the projects are real property. As an initial matter, it doesn't matter for purposes of 701A.365(1)(f) because the capital investment will far exceed any abated tax revenue, regardless of whether the property is classified as real or personal. So there is no need for an extensive analysis in the fiscal notes in the first place. To address this issue, it would be helpful if the regulations clarified that fiscal notes are for estimation purposes only, and that an applicant is not bound by the terms of any such fiscal note.

5. Establishment of Compliance Forms

It would be helpful to have a standardized form to report and document compliance with the insurance and payroll requirements. The Labor Commissioner has a model form for payroll that can be an example. But at present everybody is trying to document their own compliance and I suspect it will create confusion for everybody on the annual compliance reviews. Standardized forms will go a long way to make everything simpler for everyone.

I'll let you know if I have any more ideas.

Josh

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June 7, 2012

By Electronic Mail

Stacey Crowley
Director, Nevada State Office of Energy
755 N. Roop St.
Carson City, NV 89701

Re: LCB File No. R0125-11

Director Crowley:

This letter is submitted as the written Comments of NV Energy on the May 23, 2012 draft of the proposed regulations to amend the existing regulations in NAC 701A (LCB File No. R094-10) that implement the tax abatement provisions of Assembly Bill 522 of the 2009 Legislature. NV Energy is appreciative of the opportunity to provide these written Comments as a supplement to the oral Comments it provided at today's Workshop.

NV Energy has reviewed and generally agrees with the Comments submitted on the draft regulations to the Director by the law firm of McDonald Carano Wilson. NV Energy will not burden the record of this proceeding by repeating those Comments, but instead will highlight two specific issues of particular concern.

First, NV Energy opposes the proposed amendment to Section 16(3) of the existing regulations (Section 7 of the May 3rd draft) that defines "timeliness." While NV Energy understands that the Director needs sufficient time to process, review and conduct a hearing on applications, the effect of the proposed change could be a bar on a late-filing renewable energy developer ever securing a partial tax abatement under NRS Chapter 701A for its project. A better and less punitive incentive to file applications in a timely manner would be to refuse to expedite the hearing process for any applicant who files an "untimely" application, thus costing the tardy filer the benefit of the partial sales tax abatement for a period of time.

Second, NV Energy opposes the addition of the phrase "within this State" in Section 13 of the LCB File (Section 24(1)(a) of the original regulations). The same phrase is used in NRS 701A.365(1)(d)(2), but in that instance modifies the phrase "capital investment." In the statutory context it is clear that for a capital investment to count towards the floor it must be made in Nevada, meaning that the facility in which the money is being invested is located in this state. However, when "within this State" is used to modify "expenditure" as proposed in the draft regulations, it changes to requiring that the item obtained through the capital expenditure must have been purchased within this state. Under this interpretation, if a part of the project is sourced from another state and shipped to Nevada for final inclusion on the qualifying facility, the purchase price of that item could not count towards the \$10,000,000 floor. NV Energy does not believe this is what the Director intends, and in order to prevent a misinterpretation suggests that the proposed addition be removed.

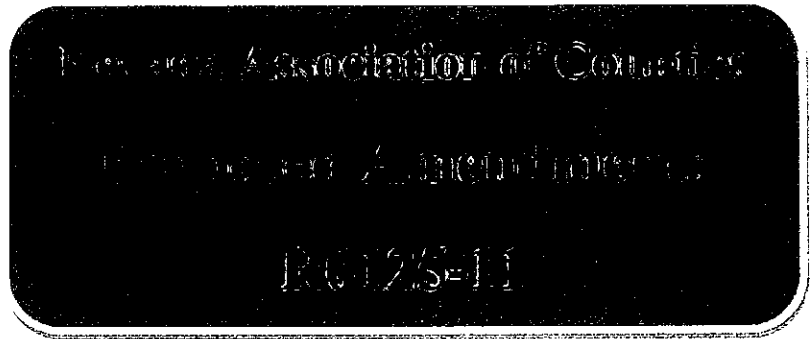
Stacey Crowley
Director, Nevada State Office of Energy
June 7, 2012
Page 2

NV Energy appreciates the opportunity to comment on the proposed changes to the tax abatement regulations. Please contact the undersigned if you have any questions regarding this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Brooks", with a stylized flourish at the end.

Douglas Brooks
Assistant General Counsel
NV Energy
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P.O. Box 98910
Las Vegas, NV 89151
702-402-5697
dbrooks@nvenergy.com



PURPOSE: Amend Section 15 to define what personal property is eligible for tax abatement. Amend Subsection 5 of Section 19 to require on-site inspection of the project or facility or audit of the applicant upon the request of a local governing body. Reverse the proposed changes to Section 20 regarding the payment of interest if an applicant is determined to not be in compliance with the abatement agreement.

LEGEND: Matter in (1) *blue bold italics* is new language in the proposed regulation; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the proposed regulation; (4) ~~purple double strikethrough~~ is language proposed to be deleted in the amendment; (5) ~~orange double underlining~~ is deleted language in the proposed regulation that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

Proposed amendments:

Sec. 15. Section 26 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 26. 1. If the ~~{Commissioner}~~ *Director* issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of sales and use taxes, unless the certificate of eligibility and abatement agreement otherwise provide, the following ~~tangible~~ *personal* property which will be used exclusively for the construction, operation or maintenance of the facility qualifies for the partial abatement of sales and use taxes:

- ~~(a) Materials for any building that will be located on the site of the facility, including, without limitation, residential structures if employees at the facility will be required to reside at the site of the facility;~~
- ~~(b) Equipment, fixtures or furniture needed and used on the site of the facility;~~
- ~~(c) Materials for any road, parking lot or other structure that is not a building which will be located on the site of the facility;~~

- ~~(d) Materials to provide water, fuel or electrical power necessary for the facility, including, without limitation, the costs inherent in tie lines and transmission lines;~~
- ~~(e) Equipment, fixtures or other tangible items necessary for the generation of power on the site of the facility;~~
- ~~(f) Motor vehicles, if the motor vehicles are specifically purchased *or leased* for exclusive use on the site of the facility;~~
- ~~(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically purchased *or leased* for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project [and] *or* operation of the facility [;], *or both*;~~
- ~~(h) Mobile housing or office units, if the units will be located at the site of the facility throughout the construction of the project and operation of the facility;~~
- ~~(i) Materials, equipment, fixtures, components or other tangible items located at the site of the facility and necessary for the construction and operation of a facility for the transmission of electricity; and~~
- ~~(j) Materials for any road required for access along the site of a facility for the transmission of electricity that is specifically purchased for exclusive use on such roads.~~

~~2. If an applicant seeks a partial abatement of sales and use taxes for any tangible property other than the property described in subsection 1, the applicant's application must specifically include a request that the [Commissioner] *Director* determine whether the property for which the partial abatement is requested qualifies for the partial abatement of sales and use taxes. The [Commissioner shall] *Director will* consult with the Department of Taxation before making any determination on an applicant's request under this subsection. If the application includes a request pursuant to this subsection, the [Commissioner's] *Director's* final decision must include a determination of whether the property qualifies for the partial abatement of sales and use taxes.~~

(a) Specialized machinery and equipment directly related to the generation of process heat from solar renewable energy, for the generation of electricity from renewable energy, for the generation of electricity from geothermal resources or for the transmission of electricity produced from renewable energy or geothermal resources.

(b) Replacement parts required to maintain the machinery and equipment listed in subsection (a) in serviceable condition.

(c) Specialized test equipment required to maintain and calibrate the machinery and equipment listed in subsection (a).

Sec. 19. Section 30 of LCB File No. R094-10 is hereby amended to read as follows:

5. The ~~[Commissioner]~~ *Director* or his or her designee, upon a request of the board of county commissioners of any county or governing body of any city or town in which the project or facility is located, ~~may~~ *shall* conduct an on-site inspection of the project or facility or audit of the applicant to determine if the applicant is in compliance with the abatement agreement.

Sec. 20. Section 31 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 31. 1. If the ~~[Commissioner]~~ *Director* determines that a project or facility is not in compliance with the abatement agreement ~~[;]~~ *pursuant to section 30 of this regulation*, the applicant shall ~~pay~~ *pay* to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated during the period in which the project or facility was not in compliance with the abatement agreement.

~~1. Payment of Subsection 2 shall be made within 60 days after the date of this written notice from the Commissioner to the person the payment is due. If the amount of Subsection 2 is not the amount of the abatement, the claimant has been notified of the amount of interest, penalty, and assessed amount of NRS 701.40 calculated as standing on the effective date of the abatement assessment.~~

~~2. Any amounts paid to the State of Nevada to recoup abated local sales and use taxes and property taxes must be paid by the State of Nevada to the appropriate local agency. If the State of Nevada recovers any interest, the amount to the appropriate local agency must include an appropriate share of the interest recovered.~~

~~3. **Repay pursuant to NRS 701.4380 any abated taxes owed to the State or any political subdivision of the State not later than 60 days after receiving written notice pursuant to subsection 3 of section 30 of this regulation.**~~

~~4. The ~~Commissioner~~ Director may take any action which is authorized by law and which he or she believes is reasonably necessary to enforce the provisions of this section.~~

Contact:

Wes Henderson

whenderson@nvnaco.org

775-883-7863

Final Proposed Amendments

Final Proposed Amendments to LCB File R125-11 dated July 19, 2012

Section 15. Section 26 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 26. 1.

(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically purchased for exclusive use on the site of the facility and will remain on the site of the facility throughout the operation of the facility, or is specifically leased for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project or operation of the facility;

Sec.13. Section 24 of LCB File No. R094-10 is hereby amended to read as follows

Sec.24.2.a

(a) the Director will consider an employee: (a) To be a full-time employee working on construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work an average of 35 or more hours per week while engaged in activity that furthers construction of the facility."